

*Invitation to Tender ExPol/B/DEVE/2007/01*

<p><b>POLICY COHERENCE FOR DEVELOPMENT AND THE EFFECTS OF EU FISHERIES POLICIES ON DEVELOPMENT IN WEST AFRICA</b></p>
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**DRAFT REPORT**

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**European Parliament**

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Submitted by:

**L Bartels, L de la Fayette and associates**

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## Disclaimer and Report Information

This study has been prepared by the authors named below for the European Parliament, Directorate-General Internal Policies of the Union, Directorate B, Structural and Cohesion Policies under Invitation to Tender ExPol/B/DEVE/2007/01.

The views expressed in this study are purely those of the authors and do not necessarily reflect the views of the European Parliament nor in any way anticipate its future policy in any area.

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(1) University of Edinburgh, United Kingdom

(2) Oceans and Environment International, United Kingdom

(3) Sustainable Fishing Solutions Ltd, United Kingdom

(4) School of Oriental and African Studies, United Kingdom

Address for correspondence:

Dr L Bartels  
School of Law  
University of Edinburgh  
Edinburgh EH8 9YL  
United Kingdom

Tel: +49 6221 623 819  
Fax: +44 870 130 1008  
Email: [lorand.bartels@ed.ac.uk](mailto:lorand.bartels@ed.ac.uk)

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## **EXECUTIVE SUMMARY**

### **1. *Introduction***

The purpose of this study is to provide background information on and analysis of the consequences of the EU Common Fisheries Policy (CFP) on sustainable development in West Africa, and to make recommendations on ways of achieving coherence between its fisheries policies, and other policies, including development policies, trade policies and human rights and good governance policies. The countries treated in this study are the 15 countries in the Economic Community of West African States (ECOWAS) and neighbouring coastal States with which the EU has currently concluded fisheries agreements (Gabon, Mauritania, Morocco and São Tome and Principe).

### **2. *Policy Coherence for Development***

The concept of Policy Coherence for Development (PCD) is a central element of the EU's development strategies and the governing policy framework for the present study. The term is defined as follows:

Policy Coherence for Development means working to ensure that the objectives and results of a government's development policies are not undermined by other policies of that same government which impact on developing countries, and that these other policies support development objectives where feasible.

More specifically for the EU, the 2005 European Consensus on Development defines the concept as:

... ensuring that the EU takes account of the objectives of development cooperation in all policies that it implements which are likely to affect developing countries, and that these policies support development objectives.

Policy coherence (and PCD in particular) is for obvious reasons a desirable goal. However, for the EU, there are also legal obligations. Thus, the EU's fisheries policies must:

- be consistent with the EU's other external policies, including development, trade and human rights (Art 3 EU)
- integrate principles of environmental protection, with a view to achieving sustainable development (Art 6 EC; Art 53 Cotonou; in part Art 178 EC).
- not contradict the EU's objective of integrating developing countries into the world economy (Art 178 EC)
- not undermine the relevant EU/ACP development strategies (Art 23(d) Cotonou) nor efforts to combat poverty (Art 178 EC)
- not violate human rights, democratic principles and the rule of law (Art 1 Cotonou; in part Art 178 EC).

### **3. *Fisheries and Sustainable Development in Africa***

Many West African coastal States have Exclusive Economic Zones (EEZs) abundant in marine life and fish stocks, yet the region contains some of the poorest countries in the world. If appropriately managed, fishery resources could contribute considerably to food security and to sustained economic development. For many of these countries fisheries are of significant socio-economic importance. First, they satisfy nutritional needs. Second, for some countries they make significant contributions to GDP. Third, for some countries they provide a significant source of foreign earnings by way of exports. Fourth, at a micro-economic level, small-scale fishers make a substantial contribution in supporting rural livelihoods where alternative forms of income are limited, and in rural and urban areas where access to financial capital or land is absent. From a gender equality perspective, it is relevant also that the post-harvest processing is primarily conducted by women. Managing the fisheries is a substantial challenge, however. There are a number of threats to the fisheries industry in

West Africa coastal States, some of which are linked to the EU's fisheries policy. These include: competition for resources, overfishing and IUU fishing. These threats pose a severe risk of an increase in poverty among already poor populations.

#### **4.      *The International Legal Framework***

Policy coherence for fisheries and sustainable development in West Africa must be analysed and applied in the context of the international legal framework. For the EU, this not only provides the legal framework in which it is obliged to operate but it also describes the standards to which it should strive if it is to maintain credible and responsible fisheries and development policies.

There are many international instruments are relevant to fisheries conservation and management, fisheries development and coherence between the two. The relevant instruments include not only legally binding agreements, codes, plans of action and guidelines relating to fisheries, but also those relating to the protection of the environment and sustainable development, of which the conservation, management and sustainable use of fisheries form a part. The most important are the United Nations Convention on the Law of the Sea (UNCLOS), the UN Fish Stocks Agreement (UNFSA), the FAO Code of Conduct and the FAO International Plans of Action on IUU Fishing and Capacity. The EU (through the European Community and its Member States) is committed to all of these agreements and instruments.

There are numerous organizations in the West African region with some degree of responsibility for fisheries cooperation. Of particular importance is the ICCAT, of which the EU and several West African States are members. Because the EU is a member of ICCAT, its measures are applicable to EU vessels fishing in West Africa. In any case, most West African fisheries agreements which provide tuna fishing opportunities expressly incorporate ICCAT standards. Other organizations in the region are focussed on fishing within EEZs and include CECAF (open to coastal and distant water States) and three organizations open only to coastal States (SRCF, COREP) and COMHAFAT). For various reasons, including overlapping competences, variable membership and lack of financing, these organizations have not been able to achieve their objectives fully.

#### **5.      *The Common Fisheries Policy***

EU fisheries related policies as they relate to West Africa are principally concerned with fisheries access agreements, although trade, illegal, unreported and unregulated (IUU) fishing and structural/fleet policy are also relevant. Fisheries access agreements are agreements between a coastal State and another State for the purpose of providing the fishing vessels of the latter with fishing opportunities in the waters of the former. Over the past three decades, the EU has negotiated agreements with more than 30 countries. Approximately 20 of these have been concluded with developing States, approximately half of which were with countries in the West African region. These agreements are a significant component of the CFP.

The agreements with West African (and other developing countries) have been criticised from almost every angle. In the context of PCD the principal criticisms have been:

- *Absence of stock assessments*, meaning that TACs and quotas cannot be set for fish stocks;
- *Definition of fishing opportunities*, whereby fishing opportunities are fixed according to the size or number of fishing vessels, which is imprecise and difficult to control;
- *Inconsistent / inadequate technical conservation measures*, first in that the EU has not applied the same standards to the fisheries agreements that it applied under the CFP in EU waters and second that measures were not based on scientific assessment but on industry pressures;
- *Conflict with small-scale fisheries*, including competition for the same resources, both directly and indirectly; gear conflicts when vessels occupy the same fishing grounds; and destruction of sensitive habitats such as reefs and seagrass beds;

- *Support for development of domestic fishing industry*, including inadequate implementation of provisions requiring landing of catches at domestic ports, employment of local seamen and ineffective use of funds provided under agreements for developing fisheries;
- *Compliance and enforcement*, including a lack of enforcement regulations in earlier agreements and a poor record of compliance for EU vessels;
- *Ineffective institutional process*, in particular as Joint Committees, designed to verse the agreements, rarely met.

These problems were largely recognized by the Commission when it came to review the CFP in 2002, leading to the adoption of an Integrated Framework for Fisheries Partnership Agreements. The move from access agreements to “partnership agreements” is designed to contribute better to responsible fishing in the interests of both Parties. They are not – for the time being at least – radically different from current fisheries agreements, but are designed to be negotiated and developed through a partnership approach. The Framework was put into practice in 2003, when the EU began negotiating the new type of fisheries partnership agreements. In March 2006, the first of these, with the Solomon Islands, came into force. To date, the EU has signed ten FPAs, four of which are with countries in West Africa (Cape Verde, Gabon, Mauritania, Morocco), and has initialled four more, three of which are with West African countries (Côte d’Ivoire, São Tomé and Príncipe and Guinea Bissau).

Given the short length of time since any FPA has been in force, it is too early to judge how they will operate in practice. On their face, the agreements appear to respect most of the principles of sustainable fishing and there are identifiable improvements over earlier agreements. On the other hand, the agreements are not substantially different and at this point it is unclear how the fisheries policy aspects will be designed and implemented. As the agreements are now based on a partnership approach, it can be expected that they will develop over time.

On structural / fleet policy, the EU has had a long-standing problem that it has never been reduced to a size which is appropriate for the level of resources. This has directly and indirectly added to the pressure on EU fisheries agreements. New rules were introduced in 2002 with the objective of achieving a stable and enduring balance between fishing capacity and fishing opportunities”. The rules include a new rules-based fleet management system involving a general entry/exit ratio of 1:1 (such that the introduction of new vessels requires the removal of the same capacity) and strict rules for vessel modernization (aid for which, *inter alia*, is not to lead to an increase in capacity). Importantly, for present purposes, the rules (following temporary derogation periods) provided for the removal of aid for the construction of new vessels and the export of capacity to third countries (including under joint ventures).

IUU fishing is one of the primary threats to sustainability in West African fisheries, and a major challenge for fisheries and development policies (including the EU’s fisheries policy) in the region. IUU fishing not only undermines fisheries conservation, but also results in substantial economic losses, threatens livelihoods and food security and undermines the economic and social conditions of fishing communities and fishers. The general response within the EU to IUU fishing has been a Community Action Plan for the Eradication of IUU Fishing, adopted by the Commission in 2002. A number of actions have been taken in the context of this plan, although the general view is that there is much more to be achieved. In its work programme for 2007, the Commission announced that IUU fishing will be a priority and that it intended to produce a communication on IUU fishing and a proposal for a regulation defining a new strategy to combat it.

## **6. Trade and Development**

Fisheries Partnership Agreements (FPAs) are supported by the EU’s trade regime, which is structured so as to support the EU distant water fleet (DWF) by a combination of subsidies, tariff preferences for products produced in ACP countries (including some West African countries), strict rules of origin and SPS measures. The end result is that EU processors can obtain their raw materials duty free, while the EU DWF is able to sell to ACP processors at a higher price. In this way, both EU industries

(the processors and the fleet) benefit, at the cost of the development of ACP processors. New Economic Partnership Agreements (EPAs) are presently being negotiated with the ACP countries, including West African countries, but it is questionable how far this regime is being addressed to the benefit of the West African countries. The European Parliament should take an active role in ensuring that the EU's development objectives are fully taken into account in the EU's fisheries trade policy. In addition, it should consider whether, as in the regional EPA process, regionally negotiated fisheries agreements might be in the best interests of West African countries.

## **7. *Human Rights and Good Governance***

Human rights clauses providing for 'appropriate measures' in the event that one of the partner countries violates human rights or democratic principles have been included in all non-sectoral EU trade and cooperation agreements since the early 1990s. However, a lack of coherence in the EU's external negotiating strategy has meant that human rights clauses are not in sectoral agreements, including on fisheries. This has been a concern of the European Parliament for some time, and in a resolution of 14 February 2006, the Parliament 'call[ed] for the human rights and democracy clause to be extended to all new agreements between the European Union and third countries, both industrialised and developing, and including sectoral agreements, [and] emphasise[d] that it is no longer prepared to give its assent to new international agreements that do not contain a human rights and democracy clause. These are necessary not just to allow fisheries agreements to be suspended, but to prevent the undermining of the EU's external human rights policies in other domains.

In addition, this study considers the role of 'good governance clauses', such as the clause in the Cotonou Agreement. In that agreement the purpose of the clause is both to ensure that EU funds are allocated according to their intended purpose; and to ensure that EU funds are not used to subvert development in the recipient countries, which could contradict EU development objectives. It is suggested that consideration should be given to introducing such clauses in all agreements with developing countries that provide for financial payments, including fisheries agreements. In this case, this is not because EU funds are provided for any specific purpose (indeed, FPAs frequently specify that the partner country is unregulated in this respect, at least for some of the funds). Rather, it is to ensure coherence with the EU's development objectives, which include anti-corruption measures.

## **8. *Recommendations***

Based on this analysis, this study makes the following 18 recommendations.

### ***Recommendation 1***

In principle, sustainable fisheries management in West Africa countries should be based upon both the precautionary approach, and the ecosystem approach to fisheries, as is required in European waters.

### ***Recommendation 2***

In accordance with the legal requirements on fishing only the surplus fish, before any agreement is concluded or extended, there must be reliable determinations of the status of the stocks, the maximum sustainable yield, the total allowable catch, and the amount of fish that could be caught by local fishers. No fishing should take place until these determinations are made and the EU should not take any fish if there is no surplus.

### ***Recommendation 3***

Action on bycatch and discards should be implemented in West African waters under existing FPAs, and future FPAs must contain provisions on bycatch.

### ***Recommendation 4***

Strong efforts should be made to improve MCS in African Coastal States as soon as possible.

### ***Recommendation 5***

The EU should take the initiative in helping West African countries to coordinate scientific research projects in the area, and should require its own vessels to provide accurate data to research programmes.

### ***Recommendation 6***

Together with other donors, the EU should improve CEEFAC's research capacity, including through a significant amount of funding.

### ***Recommendation 7***

Increased development and capacity-building assistance should be provided to West African countries for developing a national fisheries policy, research capacity in fisheries science, fisheries management capacity, human resources training, MCS and enforcement capacity, as well as general fisheries governance, through coordination of EU development programmes, national development programmes of EU Member States and programmes of international organisations and NGOs. These should be coordinated or integrated with any FPAs to ensure that funds are effectively utilised for fisheries policy and development purposes. FPAs should always be complemented by development assistance and capacity-building.

### ***Recommendation 8***

The EU should continue to support national and regional measures to combat IUU fishing off the coast of West Africa, including the elaboration of the new FAO instrument.

### ***Recommendation 9***

The EU must take account of the interests and development needs of West African countries when negotiating and implement FPAs

### ***Recommendation 10***

#### ***(a) Non-discrimination***

Priority access should be reserved for the national fleet of the coastal State, especially small scale and artisanal fishers. In accordance with Article 61 of the LOSC, other developing States in the region could also be given priority.

#### ***(b) Subsidies***

EU shipowners should not be subsidised and should pay the market price for licences in West African EEZs. Moreover, subsidies that support over-capacity should be terminated and greater incentives provided to reduce over-capacity.

#### ***(c) Rules of origin***

The rules of origin for trade should be reviewed and amended to end privileges for the EU fleets that impede West African processors efforts to increase production and buy and sell at a competitive price.

#### ***(d) TBT and SPS measures***

Technical and financial assistance must be granted to build capacity to help West African countries meet EU requirements concerning technical barriers to trade and, particularly, sanitary and phytosanitary standards.

### ***Recommendation 11***

The EU should cooperate with host countries to find ways to minimise conflicts between the EU fleet and local small-scale and artisanal vessels. The EU should control its own vessels to ensure that they do not violate regulations and do not come into conflict with small-scale local fleets.

***Recommendation 12***

- (a) Provisions for the improvement of local processing facilities should be considered within the multiannual plans negotiated by the Joint Committees. Where appropriate, a proportion of the compensation package should be ring fenced to assist in the development of local processing and trading facilities.
- (b) Joint venture operations established to provide processing, marketing and trading services should be encouraged and should be monitored by both the coastal state and the EU.

***Recommendation 13***

Food security and sustainable livelihoods must be a primary concern of the EU in all aspects of its fisheries policy relations with West Africa, including its fisheries trade policies.

***Recommendation 14***

All new fisheries agreements should include a human rights clause consistent with EU policy, and along the lines of human rights clauses included in the EU's non-sectoral trade agreements.

***Recommendation 15***

Consideration should be given to the inclusion in all new FPAs of a good governance clause providing for the suspension of the agreement in cases of serious corruption concerning payments made under these agreements.

***Recommendation 16***

The EU should consider negotiating a regional partnership agreement. This could contain common provisions in the main text, supplemented by national protocols addressing the specific development requirements of each State.

***Recommendation 17***

The EU should consider supporting, and possibly leading, the development of a Regional Fisheries Management Organisation (RFMO) for West Africa to conserve and manage the non-tuna fish stocks, as it has in other regions of the world.

***Recommendation 18***

The EU should consider gradually phasing out its fleet off the coast of West Africa, while building up African capacity for sustainable management, providing assistance for developing the local fleet, and local processing industries, including a provision for mandatory landings



## LIST OF ACRONYMS

ACP	African, Caribbean and Pacific
CBD	Convention on Biological Diversity
CECAF	Fishery Committee for the Eastern Central Atlantic
COMHAFAT	Ministerial Conference on Fisheries Cooperation among African States Bordering the Atlantic Ocean
COREP	Regional Fisheries Committee for the Gulf of Guinea
CFP	Common Fisheries Policy
DWF	distant water fleet
EC	European Community
ECOWAS	Economic Community of West African States
EEZ	Exclusive Economic Zone
EFF	European Fisheries Fund
EPA	Economic Partnership Agreement
EU	European Union
FAA	fisheries access agreement
FAO	Food and Agriculture Organization of the United Nations
FIFG	Financial Instrument for Fisheries Guidance
FPA	fisheries partnership agreement
GA	General Assembly
GATT	General Agreement on Tariffs and Trade
HSTF	High Seas Task Force
ICCAT	International Commission for the Conservation of Atlantic Tunas
ILM	International Legal Materials
IMO	International Maritime Organization
IOTC	Indian Ocean Tuna Commission
IPOA	International Plan of Action
ITLOS	International Tribunal for the Law of the Sea
IUU	illegal, unreported and/or unregulated
JPOI	Johannesburg Plan of Implementation
LDC	least developed country
MAGP	Multi-Annual Guidance Programmes
MCS	monitoring, control and surveillance
MDG	millennium development goal
MSY	maximum sustainable yield
NGO	non-governmental organization
OECD	Organisation for Economic Co-operation and Development
OJ	Official Journal
PCD	Policy Coherence for Development
RFMA	Regional Fisheries Management Arrangement
RFMO	Regional Fisheries Management Organisation
RoO	rules of origin

SOCU	Surveillance Operations Coordinating Unit
SOFIA	State of World Fisheries and Aquaculture
SPS	sanitary and phytosanitary measures
SRCF	Sub-Regional Fisheries Commission
TAC	total allowable catch
TBT	technical barriers to trade
UN	United Nations
UNCED	United Nations Conference on Environment and Development
UNCLOS III	Third United Nations Conference on the Law of the Sea
UNDP	United Nations Development Programme
UNEP	United Nations Environment Programme
UNFSA	United Nations Fish Stocks Agreement
UNTS	United Nations Treaty Series
VMS	vessel monitoring system
WSSD	World Summit on Sustainable Development
WTO	World Trade Organisation

# CONTENTS

<b>EXECUTIVE SUMMARY .....</b>	<b>iii</b>
<b>LIST OF ACRONYMS .....</b>	<b>ix</b>
<b>1 INTRODUCTION .....</b>	<b>1</b>
OUTLINE OF STUDY .....	3
<b>2 POLICY COHERENCE FOR DEVELOPMENT (PCD) .....</b>	<b>4</b>
2.1 THE LEGAL FRAMEWORK .....	4
2.1.1 EU Law .....	4
2.1.2 Cotonou Agreement .....	5
2.1.3 Summary: Legal obligations to achieve PCD in the EU's fisheries policy .....	6
2.2 EU IMPLEMENTATION OF PCD IN ITS FISHERIES POLICY .....	6
2.3 THE EU'S INTERNATIONAL POLITICAL COMMITMENTS .....	7
2.3.1 Millennium Development Goals .....	7
2.3.2 Johannesburg Plan of Implementation .....	8
<b>3 FISHERIES AND SUSTAINABLE DEVELOPMENT IN WEST AFRICA .....</b>	<b>10</b>
3.1 INTRODUCTION .....	10
3.2 NUTRITION AND FOOD SECURITY .....	10
3.3 MACROECONOMIC BENEFITS .....	11
3.3.1 Contribution to GDP .....	11
3.3.2 Foreign exchange .....	11
3.3.3 Other government revenues .....	12
3.4 MICROECONOMIC BENEFITS .....	12
3.4.1 Employment .....	12
3.5 THREATS TO THE FISHERIES INDUSTRY .....	13
3.5.1 Policy tensions .....	13
3.5.2 Competition for resources .....	14
3.5.3 Overfishing .....	14
3.5.4 IUU fishing .....	15
<b>4 THE INTERNATIONAL AND LEGAL FRAMEWORK .....</b>	<b>16</b>
4.1 LEGALLY BINDING INSTRUMENTS .....	16
4.1.1 The 1982 United Nations Convention on the Law of the Sea .....	16
4.1.2 UN Fish Stocks Agreement .....	17
4.2 NON-BINDING INSTRUMENTS .....	18
4.2.1 The United Nations Conference on Environment and Development (UNCED) .....	18
4.2.2 The FAO Code of Conduct for Responsible Fisheries .....	18
4.2.3 Other instruments .....	20
4.3 REGIONAL FISHERIES INSTRUMENTS .....	20
4.3.1 ICCAT .....	20
4.3.2 CEEAC .....	21
4.3.3 SRCF .....	22
4.3.4 COREP .....	22
4.3.5 COMHAFAT .....	23
<b>5 THE COMMON FISHERIES POLICY .....</b>	<b>24</b>
5.1 LEGAL FRAMEWORK .....	24
5.1.1 Lomé Conventions .....	24
5.1.2 Cotonou Agreement .....	25
5.2 FISHERIES ACCESS AGREEMENTS .....	26
5.2.1 Evolution of EU fisheries agreements .....	26
5.2.2 Criticisms of fisheries agreements .....	27
5.2.3 Reform of the Common Fisheries Policy .....	31
5.2.4 Fisheries Partnership Agreements .....	33
5.3 STRUCTURAL / FLEET POLICY .....	34
5.3.1 Financial aid for joint ventures/enterprises .....	35

5.3.2	<i>Structural policy reform</i> .....	36
5.4	IUU FISHING .....	36
<b>6</b>	<b>TRADE AND DEVELOPMENT</b> .....	<b>39</b>
6.1	RELATIONSHIP BETWEEN EU TRADE POLICY AND FPAS .....	39
6.2	REFORMS.....	41
6.2.1	<i>Rules of origin</i> .....	41
6.2.2	<i>Delinking of negotiations on fisheries partnership agreements</i> .....	42
6.2.3	<i>Sanitary and Phytosanitary Measures</i> .....	42
6.3	CONCLUSIONS .....	42
<b>7</b>	<b>HUMAN RIGHTS AND GOOD GOVERNANCE</b> .....	<b>44</b>
7.1	HUMAN RIGHTS CLAUSES .....	44
7.1.1	<i>General policy</i> .....	44
7.1.2	<i>Sectoral agreements</i> .....	44
7.2	GOOD GOVERNANCE CLAUSES .....	45
<b>8</b>	<b>ANALYSIS AND RECOMMENDATIONS</b> .....	<b>47</b>
8.1	INTRODUCTION.....	47
8.2	INCOHERENCE BETWEEN FISHERIES POLICY AND ENVIRONMENTAL PROTECTION REQUIREMENTS.....	47
8.2.1	<i>Overfishing</i> .....	47
8.2.2	<i>Surplus</i> .....	48
8.2.3	<i>Bycatch</i> .....	48
8.2.4	<i>Restrictions on fishing effort</i> .....	49
8.2.5	<i>Scientific Research and Institutions</i> .....	49
8.2.6	<i>Sustainable Fisheries Management by the Coastal State</i> .....	50
8.2.7	<i>Illegal, unreported and unregulated (IUU) fishing</i> .....	50
8.3	INCOHERENCE BETWEEN FISHERIES POLICY AND DEVELOPMENT POLICY .....	51
8.3.1	<i>Value of FPAs</i> .....	51
8.3.2	<i>Development of local fleets</i> .....	51
8.3.3	<i>Employment of local crew</i> .....	52
8.3.4	<i>Effect on small-scale fishers</i> .....	52
8.3.5	<i>The local processing industry</i> .....	53
8.4	INCOHERENCE BETWEEN FISHERIES POLICY AND HUMAN RIGHTS AND GOOD GOVERNANCE POLICY ....	54
8.4.1	<i>Human rights</i> .....	54
8.4.2	<i>Human rights clause</i> .....	54
8.4.3	<i>Good governance clause</i> .....	55
8.5	LONGER TERM ISSUES.....	55
8.5.1	<i>Regional cooperation and integration</i> .....	55
8.5.2	<i>The future of the EU fleet</i> .....	56
	<b>APPENDICES</b> .....	<b>57</b>
	APPENDIX 1: MAP OF WEST AFRICA .....	58
	APPENDIX 2: WEST AFRICAN EXPORTS OF FISH AND FISH PRODUCTS TO THE EU IN 2006 (IN EURO).....	59
	APPENDIX 3: FISH PRODUCTION AND TRADE IN WEST AFRICA .....	61
	APPENDIX 4: SENEGAL CASE STUDY .....	64
	APPENDIX 5: MAURITANIA CASE STUDY.....	65
	APPENDIX 6: THE CONTRIBUTION OF FISHERIES IN WEST AFRICAN COASTAL STATES .....	67
	APPENDIX 7: ‘NEW EU/IVORY COAST FISHERIES PARTNERSHIP AGREEMENT’ .....	74
	APPENDIX 8: ‘EU TRAWLERS DUMPING DEAD FISH OFF WEST AFRICAN COAST’ .....	75
	APPENDIX 9: ‘EU TRAWLERS GET FISHING RIGHTS OFF AFRICA FOR £350M’ .....	76
	APPENDIX 10: ‘NET LOSSES’ .....	78
	APPENDIX 11: INTERVIEW WITH DAO GAYE, PRESIDENT OF CONIPAS (ARTISANAL FISHERIES COUNCIL OF SENEGAL),.....	81
	<b>SELECT BIBLIOGRAPHY</b> .....	<b>83</b>

# 1 INTRODUCTION

The purpose of this study is to provide background information on and analysis of the consequences of the EU Common Fisheries Policy (CFP) on sustainable development in West Africa, and to make recommendations on ways of achieving coherence between its fisheries policies, and other policies, including development policies, trade policies and human rights and good governance policies<sup>1</sup>.

Central to this issue are the fisheries access agreements giving EU distant water fleets (DWFs) access to the fisheries resources of these countries. These agreements date from the mid-1970s, when changes in international law led to the recognition of 200-mile exclusive economic zones (EEZs) of coastal States (later codified in the 1982 United Nations Convention on the Law of the Sea (LOSC)). As a result, it became necessary to enter into agreements with, among others, West African countries, to provide access for the European fleet to these countries' fisheries resources. The earliest of these access agreements paid little attention to conservation and management or to the domestic development concerns of partner countries' fishing industries and were essentially simple "cash for access" types of arrangement. The traditional view of DG Fisheries, which is responsible for these agreements, has been that these are fundamentally commercial agreements concluded with a third country in order to obtain fishing rights for EU vessels<sup>2</sup>. However, it has become increasingly clear that such access agreements can be detrimental to other important principles governing EU external policies, including the principle of sustainable development. In particular, access agreements have been criticized for exporting the problem of excess fishing capacity from Europe to Africa, hindering sustainable development by depleting the basic resource, potentially threatening food security, disrupting local artisanal fishing, and hindering the development of a domestic African fishing and processing industry.

This has legal implications for the EU. Since the 1993 Treaty of Amsterdam, the EU has been obliged under Article 178 of the EC Treaty to take account of development objectives in all policies affecting developing countries, which includes fisheries policies (see Section 2). This legal requirement has also been reinforced by the 2000 Cotonou Agreement, to which all West African countries are party, and by developments in international fisheries law (described in Section 4). Partly as a result of these legal obligations, the EU has increasingly been taking account of sustainable development objectives in its more recent fisheries agreements (Section 4). Concretely, the EU has incorporated specific payments to support the third country fisheries sector in its financial package under the access agreements, and has placed greater emphasis on various social measures (which existed in earlier agreements, but were less common) such as employment of local fishers and landing at domestic ports. Even so, despite these changes in EU policy, the debate concerning coherence between fisheries and development policies has continued<sup>3</sup>.

Although the European Commission has for some time recognised the requirements of development coherence, including the need to ensure that fisheries agreements do not constrain the development or viability of the domestic fishing industry<sup>4</sup>, it is only relatively recently that it has sought to address the issue comprehensively. In its 2001 Green Paper, published as part of the review of the CFP, the Commission noted that many developing States were trying to enhance their ability to develop their own fisheries and that there was therefore an increasing need for cooperation in areas such as financial assistance, assistance related to human resources development, technical assistance, transfer

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<sup>1</sup> Throughout this study, reference will be made to the European Union (EU) rather than to the European Community (EC) although it is the EC which has legal personality.

<sup>2</sup> See, for example, Commission Communication on Fisheries Agreements: Current Situation and Perspectives, COM(96) 488, 30.10.1996, at pp 4-5 and Commission Answer to Written Question E-2579/98 [1999] OJ C 289/5.

<sup>3</sup> See eg. A Acheampong, *Coherence between EU Fisheries Agreements and EU Development Cooperation: The Case of West Africa*, ECDPM Working Paper No 52, (Brussels: EDCPM, 1997), WWF, *The Footprint of Distant Water Fleets on World Fisheries* (WWF, 1998); and V M Kaczynski and D L Fluharty, 'European Policies in West Africa: Who Benefits from Fisheries Agreements?' (2002) 26 *Marine Policy* 75.

<sup>4</sup> See, eg. COM(96) 488, above at n 2, at p 4.

of technology, advisory and consultative services, training and capacity to better manage resources<sup>5</sup>. The Commission also acknowledged various difficulties affecting (EU and host country) fishing activities in developing country waters, including a lack of knowledge about fisheries resources and about the impact of fishing activities on ecosystems, difficulties in determining the “surplus” for foreign fishing, risks contradictory to long term investment, a lack of monitoring and control of fishing activities and difficulties in combating illegal, unregulated and unreported (IUU) fishing<sup>6</sup>. Although it considered that in its fisheries relations with developing countries substantial progress had been made in addressing these issues, the Commission acknowledged that fisheries agreements had to be adapted in order to meet developing States’ requirements and legitimate aspirations to develop their own fisheries and contribute to the development of their fisheries policies<sup>7</sup>.

To that end, in December 2002, the Commission published an Integrated Framework for Fisheries Partnership Agreements<sup>8</sup> in which it set out principles for an enhanced policy dialogue between the EU and developing countries, in order to improve their capacity to achieve sustainable fisheries and to contribute to their development objectives. This Framework was later endorsed by the Council, which adopted Conclusions on fisheries agreements further defining priorities for this area of policy<sup>9</sup>. These include:

- contributing towards sustainable exploitation of surplus fisheries resources,
- improving scientific and technical knowledge,
- preventing overfishing, in particular of stocks which are of interest for local people (and, in this context, taking account of coastal State priorities in favour of their private national sectors),
- contributing towards combating IUU fishing,
- contributing towards strategies for sustainable fisheries management as defined by the coastal State, and
- facilitating the integration of developing coastal States into the global economy, to be achieved by encouraging the creation of an environment that is favourable to the development of a dynamic, viable and competitive private sector, notably by a framework supporting European investments and the transfer of technology and vessels.

The Commission’s Framework was first put into practice in 2003, when the EU began negotiating the new type of fisheries partnership agreements (FPAs). To date, the EU has signed ten FPAs, four of which are with countries in West Africa (Cape Verde, Gabon, Mauritania, Morocco), and has initialled four more, three of which with West African countries (Côte d’Ivoire, Guinea Bissau, São Tomé and Príncipe)<sup>10</sup>. The EU is also expected to negotiate FPAs with Guinea and, outside West Africa, Mauritius during 2007. There are important questions as to the extent to which these agreements are consistent with the EU’s development objectives (on which see Section 5).

Resolving these issues is important for both sides. The EU benefits from, and in some cases depends on, West African fisheries for direct and indirect employment and supply to the EU market, while West African countries depend to a varying extent upon EU fisheries agreements for basic revenue and foreign exchange earnings, for assistance to develop a sustainable fishing industry and for exports to European markets. The extent to which the continued presence of the European fleet in West

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<sup>5</sup> European Commission, Green Paper on the Future of the Common Fisheries Policy, COM(2001) 135, 20.03.2001, at p 18.

<sup>6</sup> Ibid.

<sup>7</sup> Ibid, at p 36.

<sup>8</sup> European Commission, Communication on an Integrated Framework for Fisheries Partnership Agreements with Third Countries, COM(2002) 637, 23.12.2002.

<sup>9</sup> Council Conclusions on a Communication from the Commission on an Integrated Framework for Fisheries Partnership Agreements with Third Countries, 15 July 2004 (11485/1/04 Rev 1 PECHE 254).

<sup>10</sup> For a current list, see [http://ec.europa.eu/fisheries/cfp/external\\_relations/bilateral\\_agreements\\_en.htm](http://ec.europa.eu/fisheries/cfp/external_relations/bilateral_agreements_en.htm).

African waters may hinder the development of the domestic industry, even taking into account the benefits of the FPAs, remains to be determined.

#### **OUTLINE OF STUDY**

This study is structured as follows. Section 2 sets out the legal and policy framework on policy coherence for development, which requires that the EU's fisheries policy must take account of EU development cooperation objectives. Section 3 provides factual information on the role of the fisheries sector in West African countries. Section 4 outlines the international legal framework for EU fisheries policy. Section 5 examines the effect of the Fisheries Partnership Agreements on West African countries. Section 6 discusses the relationship between these agreements, the EU's trade policy, and the EU's ongoing negotiations of Economic Partnership Agreements (EPAs). Section 7 proposes that fisheries agreements be brought into line with the EU's policy on human rights, democratic principles and good governance. Section 8 concludes with analysis and recommendations.

## 2 POLICY COHERENCE FOR DEVELOPMENT (PCD)

The concept of Policy Coherence for Development (PCD) is a central element of the EU's development strategies<sup>11</sup> and the governing policy framework for the present study. The term is defined by the OECD as follows:

Policy Coherence for Development means working to ensure that the objectives and results of a government's development policies are not undermined by other policies of that same government which impact on developing countries, and that these other policies support development objectives where feasible.<sup>12</sup>

More specifically for the EU, the 2005 European Consensus on Development defines the concept as:

... ensuring that the EU takes account of the objectives of development cooperation in all policies that it implements which are likely to affect developing countries, and that these policies support development objectives<sup>13</sup>.

Policy coherence (and PCD in particular) is for obvious reasons a desirable goal. However, for the EU, it is more than this: it is also a legal obligation. This obligation has a number of sources in the EU and EC primary treaties, and in the Cotonou Agreement between the EU and the 79 ACP countries, among which are all of the countries in West Africa. The following will set out the legal framework governing PCD for the EU, and give an account of the major ways in which this framework is being implemented by the EU in practice.

### 2.1 THE LEGAL FRAMEWORK

#### 2.1.1 EU Law

Article 3 EU states as a general principle that '[t]he Union shall ... ensure the consistency of its external activities as a whole in the context of its external relations, security, economic and development policies'. This general statement on consistency does not give any particular priority to the various policies it mentions. However, elsewhere in the primary treaties, it is specified that both environmental protection and development cooperation objectives are to be given priority in the formulation of any other policies (though to different degrees).

The provision on the environment is simple and binding. Article 6 EC also provides that '[e]nvironmental protection requirements must be integrated into the definition and implementation of the Community policies and activities referred to in Article 3 [which includes the CFP], in particular with a view to promoting sustainable development'. In other words, the EU must make sure that its fisheries policy is environmentally sustainable. By contrast, the provisions on development cooperation are a little more elaborate, but also somewhat weaker in normative terms. Article 178 EC states that '[t]he Community shall take account of the [development cooperation] objectives referred to in Article 177 in the policies that it implements which are likely to affect developing countries.' The objectives themselves are divided into two bundles. The first is set out in Article 177(1) as follows:

- the sustainable economic and social development of the developing countries, and more particularly the most disadvantaged among them,

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<sup>11</sup> For a historical survey of the concept of PCD, see Centre for European Policy Studies (CEPS), *Policy Coherence for Development in the EU Council: Strategies for the Way Forward* (Brussels: CEPS, 2006), at pp 2-5.

<sup>12</sup> This often-cited definition was formulated at an OECD Technical Workshop in Paris on 13 October 2005. See OECD, *Policy Coherence for Development: Promoting Institutional Good Practice* (Paris: OECD, 2005) at p 28 n 4.

<sup>13</sup> Joint statement by the Council and the representatives of the governments of the Member States meeting within the Council, the European Parliament and the Commission on European Union Development Policy: The European Consensus [2006] OJ C 46/1.



- the smooth and gradual integration of the developing countries into the world economy,
- the campaign against poverty in the developing countries.

In addition, Article 177(2) provides that ‘Community policy in [the area of development cooperation] shall contribute to the general objective of developing and consolidating democracy and the rule of law, and to that of respecting human rights and fundamental freedoms’ and Article 177(3) states that ‘[t]he Community and the Member States shall comply with the commitments and take account of the objectives they have approved in the context of the United Nations and other competent international organisations.’ The point of this last paragraph is to go beyond the specific international legal obligations entered into by the Community, with which the EU is in any case required to comply. These two provisions are conditions on the EU’s development cooperation policy, while Article 177(2) also sets out a further objective of this policy. Either directly, or indirectly (inasmuch as these qualify the objectives set out in paragraph 1) Article 178 requires the EU to take into account these principles as well in the formulation of any policy likely to affect developing countries.

Insofar as they apply to West Africa, the EU’s fisheries policies are undoubtedly policies that ‘affect developing countries’ within the meaning of Article 178 EC. It follows therefore that the EU must ‘take into account’ these various objectives in implementing this policy. What ‘take into account’ actually means is, however, somewhat unclear. Certainly it does not mean that fisheries and development policy must be assimilated, or that fisheries policy must realize development objectives (though they may of course do this). What it must mean is that, at a minimum, the EU’s fisheries policies, to the extent that they are likely to affect developing countries’, should at the very least not contradict these development policy objectives.

### 2.1.2 Cotonou Agreement

The EU also has legal obligations under the Cotonou Agreement to achieve coherence between its development cooperation objectives and its fisheries policies. The general framework is set out in Article 1, which (echoing Article 177) states that:

The partnership shall be centred on the objective of reducing and eventually eradicating poverty consistent with the objectives of sustainable development and the gradual integration of the ACP countries into the world economy.

These objectives and the Parties’ international commitments shall inform all development strategies and shall be tackled through an integrated approach taking account at the same time of the political, economic, social, cultural and environmental aspects of development. The partnership shall provide a coherent support framework for the development strategies adopted by each ACP State.

What this means for the EU’s fisheries policy is elaborated at various other stages in the agreement. Article 53 emphasises that any fisheries agreements must be sustainable, stating that [t]he Parties declare their willingness to negotiate fishery agreements *aimed at guaranteeing sustainable and mutually satisfactory conditions for fishing activities in ACP States*<sup>14</sup>. The development aspects of such agreements are emphasised in 23(d) of the Cotonou Agreement, which provides that ‘[a]ny fishery agreement that may be negotiated between the Community and the ACP States *shall pay due consideration to consistency with the development strategies in this area*’<sup>15</sup>. As with Article 178 EC, this does not subordinate these agreements to EU/ACP development strategies, but it still requires at a minimum that any such fisheries agreement not undermine these strategies. Finally, the ‘essential elements’ clause in Article 9(2)(4) is also relevant. This provision states that:

Respect for human rights, democratic principles and the rule of law, which underpin the ACP-EU Partnership, shall underpin the domestic and international policies of the Parties and constitute the essential elements of this Agreement.

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<sup>14</sup> Emphasis added.

<sup>15</sup> Emphasis added.

While this provision is usually invoked in the context of human rights violations by ACP countries,<sup>16</sup> it bears noting that this provision also requires the EU to comply with human rights, democratic principles and the rule of law in its international policies, which includes its fisheries policies.

### 2.1.3 *Summary: Legal obligations to achieve PCD in the EU's fisheries policy*

Putting these various obligations together, it can be concluded that the EU's fisheries policies:

- Must be consistent with the EU's other external policies, including development, trade and human rights (Art 3 EU)
- Must integrate principles of environmental protection, with a view to achieving sustainable development (Art 6 EC; Art 53 Cotonou; in part Art 178 EC).
- Must not contradict the EU's objective of integrating developing countries into the world economy (Art 178 EC)
- Must not undermine the relevant EU/ACP development strategies (Art 23(d) Cotonou) nor efforts to combat poverty (Art 178 EC)
- Must not violate human rights, democratic principles and the rule of law (Art 1 Cotonou; in part Art 178 EC).

## 2.2 EU IMPLEMENTATION OF PCD IN ITS FISHERIES POLICY

The EU has taken some steps towards meeting these obligations to achieve PCD in practice, to some extent specifically with respect to fisheries<sup>17</sup>. The most significant event was the adoption of the landmark December 2005 European Consensus on Development, jointly agreed by the Council, the European Commission and the European Parliament<sup>18</sup>. The Consensus commits the EU to increasing development assistance, together with its quality and effectiveness, and reaffirms the EU's 'commitment to promoting policy coherence for development, based upon ensuring that the EU shall take account of the objectives of development cooperation in all policies that it implements which are likely to affect developing countries, and that these policies support development objectives'<sup>19</sup>. This has led to a PCD Rolling Work Program<sup>20</sup>, including biennial reporting on PCD<sup>21</sup>, as well as the integration of PCD in the EU's Africa Strategy<sup>22</sup>.

Specifically with reference to fisheries, the EU Council issued these conclusions in 2005:

The EU will continue to pay particular attention to the development objectives of the countries with which the Community will engage into bilateral fisheries agreements. Within the context of the new EU policy on fisheries partnership agreements with third countries which is being implemented since 2003, the EU will continue to encourage the conclusion of fisheries agreements in order to contribute towards rational and sustainable exploitation of the surplus of coastal States' marine resources to the mutual benefit of both parties<sup>23</sup>.

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<sup>16</sup> See section 7 below.

<sup>17</sup> A useful website, with timeline, on PCD is [www.eucoherence.org/](http://www.eucoherence.org/).

<sup>18</sup> See above at n 13.

<sup>19</sup> Ibid, para 9.

<sup>20</sup> See EU Council Conclusions on Policy Coherence for Development: PCD Rolling Work Programme 2006-2007, 17 October 2006, Doc 14075/06.

<sup>21</sup> See EU Presidency, Policy Coherence for Development (PCD) - Follow-up to October GAERC, Brussels 5 December 2006, Doc 16178/06.

<sup>22</sup> EU Council, The EU and Africa: Towards a Strategic Partnership: The Way Forward and Key Achievements in 2006, Brussels, 11 December 2006, Doc 16630/06, submitted to the European Council, 14-15 December 2006.

<sup>23</sup> EU Council Conclusions on Millennium Development Goals: EU Contribution to the Review of the MDGs at the UN 2005 High Level Event, 24 May 2005, Doc 9266/05.

The EU Council reaffirmed these lines in its Conclusions of October 2006, and added that:

Coherence between the objectives of the Common Fisheries Policy, including environmental/biodiversity goals, and the sustainable development objectives of developing countries where the Community has concluded, or intends to conclude, fisheries agreements or undertakes relevant development activities should be ensured. To this end the EU will ensure that FPAs contribute to sustainable and equitable exploitation of fisheries of third countries to the mutual benefit of both parties to the agreement and that both parties will cooperate to ensure effective management, monitoring and policy processes are in place, or under development. In doing so, the EU will seek to strengthen linkages between Community and Member States' development policy and the CFP<sup>24</sup>.

For its part, the European Parliament has also been engaged in efforts to bring PCD to the EU's fisheries policy. Two recent resolutions are particularly pertinent. On 1 February 2007, the European Parliament adopted a Resolution on Mainstreaming Sustainability in Development Cooperation Policies, in which it recalled that '[s]ustainable development is a cross-cutting issue that requires a strengthening of policy coherence in all sectors in order to ensure their smooth functioning' and '[s]tressed that more efforts are needed to combat current unsustainable developments, particularly those giving rise to ... the depletion of fish stocks'<sup>25</sup>.

Further, on 25 April 2007, the European Parliament adopted a Resolution on a Thematic Strategy for the Sustainable Use of Natural Resources, in which it considered 'that, as various fish species are currently among the most threatened long-term resources, and as the disappearance of species may result in further ecological changes, a responsible and strict fisheries policy is called for' and that 'the Member States must implement the EU's biodiversity strategy, both in fisheries and in other fields, and, in cooperation with the Commission, must take measures to attain the objective of halting the decline of biodiversity by 2010'<sup>26</sup>. The Resolution also calls on the Commission to undertake three key actions, of which one is directly relevant to PCD: 'to develop benchmark criteria for sustainable management and harvesting of biotic resources (eg wood, fish, [and] agricultural products)'<sup>27</sup>.

## **2.3 THE EU'S INTERNATIONAL POLITICAL COMMITMENTS**

The EU has undertaken a number of binding international obligations relevant to sustainable development in its external fisheries policy (see section 4). In addition, it is committed itself to a number of international political agendas with the aim of elaborating specific development targets, and specifically in the fisheries sector. The two most important of these are the Millennium Development Goals and the Johannesburg Plan of Implementation, as adopted at the World Summit on Sustainable Development.

### *2.3.1 Millennium Development Goals*

The eight Millennium Development Goals (MDGs) were elaborated in the context of the Millennium Declaration, adopted by the United Nations in 2000<sup>28</sup>. Almost all work at the UN, specialised agencies, and international financial institutions now refers to the MDGs, whose deadline for implementation is 2015. Fisheries are able to contribute to each of the MDGs<sup>29</sup>, but three MDGs have particular relevance to sustainable fisheries policy.

- *MDG1 – eradicate extreme poverty and hunger.*

It is estimated that about 50 million people dependent on fisheries are absolutely poor and many are dependent on fisheries as an essential commercial activity. Furthermore, fish is an important

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<sup>24</sup> EU Council Conclusions, above at n 20.

<sup>25</sup> P6\_TA-PROV(2007)0014, adopted 1 February 2007.

<sup>26</sup> P6\_TA-PROV(2007)0154, adopted 25 April 2007.

<sup>27</sup> Ibid, para 36(c).

<sup>28</sup> United Nations Millennium Declaration, A/Res/55/2, 18 September 2000.

<sup>29</sup> See WorldFish Center, *Fisheries and the Millennium Development Goals: Solutions for Africa* (WorldFish Center, 2005).

component of West African diets accounting, on average, for around half of animal protein intake. Development strategies and foreign and domestic fisheries policies need to promote employment, supply, sustainable fisheries production and need to integrate subsistence and commercial interests.

- *MDG7 – ensure environmental sustainability.*

It has been estimated that over half of the world's fisheries are fully exploited and a quarter is over-exploited, depleted or recovering from depletion. Destructive fishing practices are widespread and IUU fishing undermines fisheries laws, policies and practices. These problems are as prevalent in West African fisheries as in other parts of the world. The prevention of overfishing requires rational domestic and foreign fishing policies, which should take account of the wider economic and social context so that alternative sources of livelihoods can be identified and supported<sup>30</sup>.

- *MDG8 – develop a global partnership for development, with targets for ... trade.*

Fish is the most highly-traded food commodity in the world, and fisheries trade is an important component of many West African economies (fish products contributing more than 10% of the total value of national exports in some cases)<sup>31</sup>. However, the trade regimes and import regulations of the economically-advanced importing countries are often not conducive to good fisheries management in developing countries and can limit, rather than promote, access to industrial countries' fish markets. Furthermore, the unintended impact of fisheries access agreements (whether formal or informal) is often over-exploitation. The implications of trade policies need to be understood, so that trade partnerships can be utilised as vehicles for development as envisaged in the MDGs<sup>32</sup>.

### 2.3.2 *Johannesburg Plan of Implementation*

The second major agenda is the Johannesburg Plan of Implementation (JPOI), adopted in 2002 by the World Summit on Sustainable Development (WSSD). The JPOI sets out specific actions relating to fisheries, with target dates. In particular, it contains a commitment to maintain or restore fish stocks to a level that can sustain continued fishing, urgently for depleted stocks and where possible, not later than 2015<sup>33</sup>. The JPOI also addresses the position of developing States in the achievement and utilisation of sustainable fisheries. Among the commitments agreed in the JPOI are<sup>34</sup>:

- assisting developing countries in coordinating policies and programmes at the regional and subregional levels aimed at the conservation and sustainable management of fishery resources and implement integrated coastal area management plans, including through the promotion of small-scale fishing activities;
- implementing the 1995 FAO Code of Conduct for Responsible Fisheries, taking note of the special requirements of developing countries;
- encouraging relevant Regional Fisheries Management Organisations (RFMOs) to give due regards to the rights, duties and interests of coastal States and to the special requirements of developing States when allocating fisheries resources;
- eliminating subsidies that contribute to IUU fishing and to over-capacity, while completing WTO efforts to improve and clarify the subsidy regime, taking into account the special importance of this sector to developing countries; and
- strengthening donor coordination and partnerships between international financial institutions, bilateral agencies and other stakeholders to enable developing countries to develop their national, regional and subregional capacities for infrastructure and integrated management and the sustainable use of fisheries.

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<sup>30</sup> WorldFish Center, above at n 29, at p 7.

<sup>31</sup> Ibid.

<sup>32</sup> Ibid., p. 8.

<sup>33</sup> Plan of Implementation of the World Summit on Sustainable Development, Johannesburg, 4 September 2002, para. 31(a).

<sup>34</sup> Ibid., paras. 30(g) and 31(c), (e), (f) and (g).

The EU has committed itself to these objectives. As the EU Council stated in its Conclusions on 26 April 2004:

Our response to the Johannesburg Plan of Implementation (JPOI) is an integral part of the EU's efforts to support sustainable development and poverty eradication: taken together with the commitments made by the EU in the context of the Monterrey Conference and the work towards a positive outcome of the Doha Development Agenda (DDA), it is an essential element of the EU's contribution towards a global partnership for achieving the Millennium Development Goals (MDGs), the goals endorsed at WSSD and the other internationally agreed development goals.<sup>35</sup>

Together with its legal obligation to achieve Policy Coherence in Development, the EU's political commitment to the JPOI and the MDG set the framework for ensuring that EU fisheries policy in West Africa must comply with principles of sustainable development, as well as human rights and democratic principles, and must in addition comply with relevant international legal obligations. The next sections examine the extent to which this requirement is implemented in practice.

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<sup>35</sup> EU Council Conclusions on World Summit on Sustainable Development, 26 April 2004, at para 2.

### 3 FISHERIES AND SUSTAINABLE DEVELOPMENT IN WEST AFRICA

#### 3.1 INTRODUCTION

The countries treated in this study are the 15 countries in the Economic Community of West African States (ECOWAS)<sup>36</sup> and neighbouring coastal States with which the EU has currently concluded fisheries agreements (Gabon, Mauritania, Morocco and São Tome and Príncipe). A map of the countries is provided in Appendix 1. The marine area broadly corresponds to FAO Statistical Area 34.<sup>37</sup>

Many of the coastal States have Exclusive Economic Zones (EEZs) abundant in marine life and fish stocks. These are fed by cold ocean currents coming to the surface in certain localities otherwise known as upwellings. The Canary Current which feeds the upwellings off Mauritania and Senegal is one of the richest marine ecosystems in the world<sup>38</sup>, and together with the Guinea Current<sup>39</sup> support vast marine resources.

The West African region contains some of the poorest countries in the world. If appropriately managed, fishery resources could contribute considerably to food security and to sustained economic development. For many of these countries fisheries are of significant socio-economic importance. First, they satisfy nutritional needs<sup>40</sup>. Second, for some countries they make significant contributions to GDP.<sup>41</sup> Third, for some countries (Côte d'Ivoire, Ghana, Mauritania and Senegal) they provide a significant source of foreign earnings by way of exports.<sup>42</sup> Fourth, at a micro-economic level, small-scale fishers make a substantial contribution in supporting rural livelihoods where alternative forms of income are limited, and in rural and urban areas where access to financial capital or land is absent. From a gender equality perspective, it is relevant also that the post-harvest processing is primarily conducted by women<sup>43,44</sup>.

#### 3.2 NUTRITION AND FOOD SECURITY

The degree to which the population depends on fish for food varies but is often influenced by its availability, the price and availability of substitutes, and cultural and social norms. It is clear, however, that because of the relative scarcity of other forms of protein, fish provides an important

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<sup>36</sup> Benin, Cape Verde, Côte d'Ivoire, Gambia, Ghana, Guinea, Guinea Bissau, Liberia, Nigeria, Senegal, Sierra Leone and Togo (coastal States); and Burkina Faso, Mali and Niger (landlocked States). Mauritania withdrew from ECOWAS in 2002.

<sup>37</sup> Reproduced at [http://www.oceanlaw.net/orgs/maps/cecaf\\_map.htm](http://www.oceanlaw.net/orgs/maps/cecaf_map.htm).

<sup>38</sup> World Wildlife Fund, *The Footprint of Distant Water Fleets on World Fisheries* (Godalming, 1998), available at [http://assets.panda.org/downloads/distant\\_water5.pdf](http://assets.panda.org/downloads/distant_water5.pdf).

<sup>39</sup> Both systems are classified by the UN's Global Environment Facility as Class I, highly productive (>300 gC/m<sup>2</sup>-yr): see [www.edc.uri.edu/lme/text/canary-current.htm](http://www.edc.uri.edu/lme/text/canary-current.htm)

<sup>40</sup> Fish account for around 50 per cent of total animal protein needs for Côte d'Ivoire, Gabon, Gambia, Ghana, Guinea, and Senegal: see FAO, *Contribution of Fisheries to National Economies in West Africa-Policies to Increase the Wealth Generated by Small Scale Fisheries*, Policy Briefs on Development Issues No 3 (FAO, 2006) at p 5.

<sup>41</sup> In the late 1990s, fishing contributed 5 per cent or more to GDP in Ghana, Mauritania, and Senegal (UNEP, *Africa Environment Outlook, Past, Present and Future Perspectives*, 2002, at <http://unep.org/dewa/Africa/publications/AEO-1/120.htm>). In 2006, it had risen for Senegal to 7 per cent: C Bène, *Small Scale Fisheries: Assessing Their Contributions to Rural Livelihoods in Developing Countries*, FAO Circular No 1008, 2006, at p 4.

<sup>42</sup> Fisheries now provide up to 50 per cent of all export earnings in Mauritania: C Touleieb, *Impact des Accords dans le contexte de la Mondialisation – Mauritanie*, Presentation at OECD, Workshop on Opportunities and Challenges of Fisheries Globalisation, 16-17 April 2007.

<sup>43</sup> A Tall, 'Obstacles to the Development of Small-Scale Fish Trade in West Africa', Infopeche, 2002, available at [www.unctad.org/infocomm/comm\\_docs/docs/projectp/docsgamb/gambiaper3.pdf](http://www.unctad.org/infocomm/comm_docs/docs/projectp/docsgamb/gambiaper3.pdf), at p 2.

<sup>44</sup> These benefits are not captured by traditional macro-economic indicators such as 'contributions to GDP', especially when compared to other sectors such as agriculture. Fishing in small island states such as Cape Verde provides a third or more of agricultural workers with a supplementary form of employment (FAO 1996) outside the planting and harvesting season.

contribution to West African diets<sup>45</sup>, especially in coastal areas. While fish consumption per capita in Africa generally is less than half the global average (7.8 kilos compared to 16.3 kilos), the generally lower levels of protein consumption mean that fish contributes a relatively much higher proportion than the global average<sup>46</sup>. Fish consumption in this region is twice that for the rest of Africa and higher than the global average. Furthermore, 50% of all food-fish originates from small-scale fisheries, and almost all fish from small-scale fisheries is used for food (as opposed to animal feedstuffs).

### 3.3 MACROECONOMIC BENEFITS

#### 3.3.1 Contribution to GDP

One economic measurement which does substantially increase national wealth is the value added to fish after the first sale through processing and trade, which accounts for 60-70 per cent and 30-40 per cent of the gross value added (GVA)<sup>47</sup>. One author has noted that Côte d'Ivoire obtained the best value added for its products, in proportion to the total national catch.<sup>48</sup> In contrast, São Tomé and Príncipe obtained a value added far below the average for the 14 West African countries in his study area. This can be explained by the restricted trade margins imposed by the low purchasing power of these countries and the number of players involved in the value chain. The shorter the trade channels (between the fisherman and the retailer), the less the number of transactions, and the lower the possibility for creating value added. In Mauritania, the importance of industrial fisheries and the development of economies of scale probably helped to reduce trade margins and value added per ton of fish produced through small-scale fisheries.

#### 3.3.2 Foreign exchange

Small-scale fisheries can make significant contributions to national economies through the generation of foreign exchange derived from international trade, for example export values have risen from US\$15 billion in 1980 to US\$71.5 billion in 2004.<sup>49</sup> In the same period developing countries' share of total exports has risen from 40 to 50 per cent, with net receipts (i.e. deducting their imports from the total value of their exports) from fish trade increasing from less than US\$4 billion to almost US\$18 billion. Small-scale fisheries are playing an increasingly important role in the fish exports of many developing countries.

Fish exports can also help national economies enter international markets, particularly in high added value segments such as crustaceans and cephalopods.<sup>50</sup> When the trade balance in fishery products is positive, as in Gabon, Mauritania and Senegal, fisheries are a net provider of currency to the national economy. When exports mainly concern high-value fish, this does not automatically threaten the supply of lower-value fish on local markets. In Senegal, for example, only 15 per cent of cheap small pelagic catches are exported (mainly to other African countries), compared to 80, 95 and 100 per cent of demersal, shrimp and cephalopod catches<sup>51</sup>. However the diversion of labour and fisheries management capacity to the higher value segment may compromise the supply of lower value fish to the local market. Even without exports, the pursuit of higher value species to supply the growing tourist industry and the middle income home market raises concerns for food security amongst poorer households in rural areas.

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<sup>45</sup> Even in small quantities, it has been found that fish can have a significant positive impact on improving the quality of dietary protein by complementing the essential amino acids that are often present only in low quantities in vegetable-based diets: FAO, *State of World Fisheries and Aquaculture* (FAO, 2006).

<sup>46</sup> See FAO, *Contribution of Fisheries*, above at n 40, at p 5. Fish provides 18.6 per cent of animal protein in Africa generally, above the global average of 15.9 per cent, but provides a much greater proportion in some West African countries.

<sup>47</sup> See FAO, *Contribution of Fisheries*, above at n 40, p 2.

<sup>48</sup> M Kebe and F Tallec, *Contribution of Fisheries to National Economies* (FAO, 2006) at p 11.

<sup>49</sup> FAO, *State of World Fisheries and Aquaculture*, 2006, at p 57.

<sup>50</sup> See Appendix 2.

<sup>51</sup> See FAO, *Contribution of Fisheries*, above at n 40, p 3

### 3.3.3 Other government revenues

Local revenues generated from taxes on fisheries-related activities are paid by wholesalers, retailers and processors at the landing site and auction. Taxes also applied to fishing gear, licenses, engines and fuel and represent 5-10 per cent of the value added from the first sale<sup>52</sup>. These important sources of finance are used by local and national authorities on schools, transport and other infrastructure expenditure.

## 3.4 MICROECONOMIC BENEFITS

### 3.4.1 Employment

The fishing industry provides employment for an estimated 10 million people in sub-Saharan Africa, 7 million of which are from West and Central Africa (broadly the area under consideration)<sup>53</sup>. Most of these are employed directly as fishers<sup>54</sup> or in closely related secondary employment, such as fish processing or trade and in most cases the fisheries are small-scale and artisanal.

#### Artisanal fisheries (1998)<sup>55</sup>

Country	Capture by artisanal fisheries (tonnes)	Number of fishers	Employment created in the fishing sector by artisanal fisheries (%)	Number of pirogues	Number of motorized pirogues
Cape Verde	5,100	5,670	20	1,400	980
Mauritania	10,000	10,000	33	3,000	-
Senegal	353,137	57,000	94	11,600	9,300
Gambia	25,806	5,000	17	1,785	542
Guinea-Bissau	3,049	4,500	11	1,760	343
Guinea	48,000	9,000	97	2,358	1,108

Source: FAO, IRD, CNSHB 1999

The employment effects at a lower tertiary level are known also to be significant. Although difficult to quantify, they include employment in areas such as boat building and repairs, fuel sales, wood sales and various ancillary activities such as unloading fish from a canoe, breaking ice blocks, cleaning, packing and transporting fish. Many of the latter are less financially rewarding and often temporary jobs, but believed to provide a real “safety net” for the poor<sup>56</sup>.

The post-harvest sub-sector also provides women with many jobs and plays an essential role in economic and social development. Many women in West African States are powerful traders and influential business owners because of their involvement with the sector which provides them with

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<sup>52</sup> Ibid.

<sup>53</sup> See FAO, *Contribution of Fisheries*, above at n 40, p 2. These figures exclude Morocco, which has a fishing industry of some size. According to the FAO, some 400,000 people are employed directly and indirectly, although this estimate is almost 10 years old (1998) and the current figure is likely to be significantly higher because of the development of the Moroccan fishing industry during that period: FAO *Fishery Country Profiles, Morocco*, available at [www.fao.org/fi/website/FISearch.do?dom=country](http://www.fao.org/fi/website/FISearch.do?dom=country).

<sup>54</sup> In Senegal 17 per cent of the active working population is engaged in fish-related activities: Bèné, above at n 41, p.18.

<sup>55</sup> A presentation by the World Bank estimated that only a quarter of the value of West African fisheries actually remains in the region, 75 per cent of this amount is produced by local small-scale vessels. Undated.

<sup>56</sup> Ibid, p 4.



financial independence, social status and a means to educate their children<sup>57</sup>. In most cases women make an important contribution to the sector and to consumers, such as through smoking and drying a highly perishable food source for the local market where ice making facilities are usually lacking. In the Angolares region of São Tomé for example, women are using innovative solar powered dryers encased in plastic to reduce infestation and wastage<sup>58</sup>.

Although EU fisheries agreements contribute to a limited amount of employment in the region this income may be spent locally on goods and services outside the sector adding to the multiplier effect. The importance of the remittance economy has yet to be evaluated in this context, although wages from workers onboard vessels in all DWFs could potentially provide assistance to fishing households back in their home country.

### 3.5 THREATS TO THE FISHERIES INDUSTRY

There are a number of threats to the fisheries industry in West Africa coastal states, some of which are linked to the EU's fisheries policy. These threats pose a severe risk of an increase in poverty among already poor populations. Poverty is a multidimensional phenomenon involving the failure to meet a range of basic human needs and the denial of options that have consequences for opportunities to live long, healthy and creative lives. Poverty in fishery dependent communities, therefore, is not solely related to the abundance of the catch, market opportunities or the state of the resource. It is also critically dependent on how the benefits from the use of fishery and other resources are used and whether a range of basic services (e.g. in health and education) are provided.

Poverty is both partly an outcome of inadequate fisheries management (resulting in depleted fish stocks, overcapacity, etc.) and constraints in improving management. Poverty acts as a constraint because to limit the number of people engaged in fishing in an environment in which they have few alternative sources of food and livelihood is contrary to their human rights<sup>59</sup>. The contribution of fisheries to poverty alleviation and food security is therefore an integral part of the larger challenge of development<sup>60</sup>. The political and social marginalization of fishers also increases their vulnerability, reducing their resilience to shocks and crises in their daily lives.

To the extent that the threats to the fisheries industry in West Africa countries results from the EU's fisheries policy, it would appear to contradict the EU's obligation to take account of development objectives, which includes both the sustainable economic and social development of the developing countries, and more particularly the most disadvantaged among them, and the campaign against poverty in the developing countries.

#### 3.5.1 Policy tensions

Policy conflicts can occur within the sector (small versus industrial) and between sectors (environmental protection versus and poverty reduction). Conflicting objectives may include, for example:

- equity versus efficiency (some policies may support management regimes that directly trade-off efficiency against equity, where the efficiency gains are not equitably distributed);
- support for exports as opposed to production for the national market (increasing exports to increase revenues and enhance foreign exchange earnings may lead to a decrease in availability of fish for sale in local markets); and

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<sup>57</sup> The benefits are not universal. Studies in São Tomé, for example, have shown that women begin work in processing at a young age (14 years or less), often forgoing education; a Department of Fisheries survey in the country found a 46 per cent illiteracy rate for women, compared to 19 per cent nationally. See [www.pewoceanscience.org/projects/Sao\\_Tome/intro.php?id=62-20k](http://www.pewoceanscience.org/projects/Sao_Tome/intro.php?id=62-20k).

<sup>58</sup> Sustainable Fisheries Livelihoods Programme (SFLP), *Fisheries in the Livelihoods of the Poor in West Africa: Benin* (SFLP, 2002), available at [www.sflp.org/eng/007/pub4/fd/nav.htm](http://www.sflp.org/eng/007/pub4/fd/nav.htm).

<sup>59</sup> FAO Committee on Fisheries, *Social Issues in Small-Scale Fisheries*, COFI/2007/6, December 2006.

<sup>60</sup> FAO, *Increasing the Contribution of Small-Scale Fisheries to Poverty Alleviation and Food Security*, FAO Technical Guidelines for Responsible Fisheries, No 10 (Rome: FAO, 2005).

- short-term versus long-term objectives (short-term objectives of reducing poverty, maximizing employment and/or improving food security may be felt to be politically necessary, but may have a negative impact on the long-term sustainability of the resource and/or economic efficiency of the sector).<sup>61</sup>

### 3.5.2 Competition for resources

In coastal and inland areas, small-scale fishers frequently compete for the resource itself, not only with industrial large-scale fisheries but also with other sectors, i.e. for coastal land from developers, for marine parks from tourism and nature conservation interests, energy production, shipping etc. The low social status afforded to most small-scale fishers means that they often lose out in the battle for access and user rights.

### 3.5.3 Overfishing

In areas of medium to high productivity fish stocks are capable of maintaining their populations and tolerating varying levels of fishing effort, but their numbers can vary considerably from year to year and from species to species. Small pelagics such as mackerel for instance reproduce quickly and exhibit large natural fluctuations, and can recover easily in good years, whereas shark are much slower to reproduce and therefore more vulnerable to overfishing. Sustainable fisheries are based on the proviso that, catches should not exceed the reproductive capacity of the stock which will depend on anthropogenic induced changes such as pollution, habitat destruction and excess fishing levels and longer term changes such as climate change.

According to the FAO in its 2006 report, *The State of World Fisheries and Aquaculture (SOFIA)*, rebuilding depleted wild fish stocks is an urgent necessity. Since the 1950s, there has been a consistent downward trend in the proportion of marine fish stocks with potential for expanded production, coupled with an increase in the proportion classified as fully exploited, overexploited or depleted to almost 75%. In addition to overfishing targeted species, excessive bycatch and discards, as well as damage to habitats and ecosystems, can lead to the decline and depletion of the targeted stocks. Stock depletion has implications for food security, employment and economic development, reduces social welfare and undermines the integrity of marine ecosystems.

Unfortunately, a lack of resources and inaccurate reporting of industrial catches means that, most of these fisheries have not been the subject of scientific research and little is known about the status of the fish stocks, fishing effort and other pressures to which they are being subjected. National fisheries departments are reliant on the submission of accurate information from captains and vessel owners who have commercial incentives to misreport their activities with little fear of being caught. Not only does this severely hamper the determination of a sustainable level of fishing, but also downgrades the agreed level of compensation provided for the national and local fishing sector in the host country. In the context of poverty reduction and food security, the lack of information given to small-scale fishers on the state of the stocks reduces further their ability to manage them sustainably and maintain a surplus. It also weakens considerably their ability to negotiate available allocations and compete with larger scale fishing operations and/or other sectors. The capture of unwanted fish, particularly prevalent in shrimp fisheries which use very fine meshed nets, is also a major factor in the depletion of marine resources. For example, Mauritanian cephalopod trawlers fishing in Mauritania and in Senegal were found to discard 72% and 60-75% of their catch, while the Senegalese mixed fleet (targeting finfish and shrimps in shallow waters) had a discard rate of 67%<sup>62</sup>.

Although data are limited, it is generally considered that the fisheries of most or all of these countries are depleted, in part due to over-fishing by foreign fleets fishing under agreements and in part due to a substantial amount of illegal, unreported and unregulated (IUU) fishing. Scientific evidence of over-

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<sup>61</sup> Ibid (verbatim).

<sup>62</sup> M Baddy and S Guenette, *The Fisheries Off the Atlantic Coast of Morocco 1959-1997*, undated, available at [www.seaaroundus.org/report/datasets/Morocco](http://www.seaaroundus.org/report/datasets/Morocco).

exploitation has been highlighted by the Scientific Sub-Committee of CECAF<sup>63</sup>. Of the 22 stocks analysed in the northern part of the CECAF area (Morocco to Senegal/Gambia), five stocks were classified as over-exploited and one at risk of extinction. A further ten were fully exploited and for the remaining four stocks, the analysis was too uncertain to classify. The Sub-Committee recommended that one fishery be stopped altogether and that effort be reduced for a further nine stocks. Of the 28 stocks analysed in the southern region (Guinea-Bissau around the Gulf of Guinea to the Democratic Republic of the Congo), thirteen were classed as over-exploited. A further 12 had insufficient data to be categorised and three others were considered to be moderately or fully exploited. The Sub-Committee recommended reductions in fishing effort for 14 of these stocks.

#### 3.5.4 IUU fishing

The serious impact of IUU fishing (both on the high seas and within exclusive economic zones<sup>64</sup>) on the economies and livelihoods of developing countries has been described in many forums. For example, the High Seas Task Force (HSTF) report *Closing the Net*<sup>65</sup>, suggests that IUU fishing may cost sub-Saharan countries \$US1 billion per year. In countries like Guinea it is estimated that between 20 and 60% of vessels fishing within the exclusive economic zone are unlicensed<sup>66</sup>. Losses from these illegal activities are estimated at US\$27 million in shrimp catches, US\$49 million in octopus catch and US\$8 million in discarded demersal fish taken as bycatch. These may be compared against income from fisheries licenses of US\$5.8 million<sup>67</sup> and US\$3 million from the bilateral fisheries access agreement with the EU. Similar information provided by SOCU<sup>68</sup> shows the extent of the problem in the region, with some coastal states experiencing very high levels of illegal fishing. In 2001, 60% of the 2,313 vessels spotted in Guinea during 220 hours of surveillance flights were committing offences. In the same year 29% of the 947 vessels spotted in Sierra Leone or 23% of the 926 vessels spotted in Guinea Bissau where fishing illegally<sup>69</sup>.

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<sup>63</sup> Main Outcomes of the Third Session of the Scientific Sub-Committee. CECAF/XVII2004/3; Environmental Justice Foundation, *Party to Plunder: Illegal Fishing in Guinea and its Links to the EU*, 2005

<sup>64</sup> The Exclusive Economic Zone (EEZ) of the region covers about 2 475 000 km<sup>2</sup>; B Samb, *Case Study of Small Pelagic Fish Resources in North West Africa*, Paper Presented at the Norway-FAO Expert Consultation on the Management of Shared Stocks, FAO Fisheries Report No 695 (FAO, 2002).

<sup>65</sup> High Sea Task Force. *Closing the Net: Stopping Illegal Fishing on the High Seas*, 2006

<sup>66</sup> MRAG, *Review of Impacts of Illegal Unreported and Unregulated Fishing in Developing Countries, Synthesis Report*, July 2005.

<sup>67</sup> Ibid.

<sup>68</sup> The Surveillance Operations Co-ordinating Unit (SOCU) based in Banjul (Gambia) is a decentralised institution of the Sub Regional Fisheries Commission (SRFC). SRFC member States are: Cape Verde, Gambia, Guinea, Guinea-Bissau, Mauritania, Senegal and Sierra Leone.

<sup>69</sup> Environmental Justice Foundation, *Party to Plunder – Illegal fishing in Guinea and its Links to the EU*, 2005.

## 4 THE INTERNATIONAL AND LEGAL FRAMEWORK

Policy coherence for fisheries and sustainable development in West Africa must be analysed and applied in the context of the international legal framework. For the EU, this not only provides the legal framework in which it is obliged to operate but it also describes the standards to which it should strive if it is to maintain credible and responsible fisheries and development policies. This section describes the main international and regional legal instruments, while the next section describes their implementation by the EU.

There are many international instruments relevant to fisheries conservation and management, fisheries development and coherence between the two. The relevant instruments include not only legally binding agreements, codes, plans of action and guidelines relating to fisheries, but also those relating to the protection of the environment and sustainable development, of which the conservation, management and sustainable use of fisheries form a part. The most important are the United Nations Convention on the Law of the Sea (UNCLOS), the UN Fish Stocks Agreement (UNFSA or the Agreement), the FAO Code of Conduct and the FAO International Plans of Action on IUU Fishing and Capacity. The EU (through the European Community and its Member States) is committed to all of these agreements and instruments.

### 4.1 LEGALLY BINDING INSTRUMENTS

#### 4.1.1 *The 1982 United Nations Convention on the Law of the Sea*

The United Nations Convention on the Law of the Sea<sup>70</sup> is a framework agreement covering all activities on and in the oceans. It establishes the basic framework for coastal State jurisdiction and contains provisions relating to fisheries within the jurisdiction of coastal States and on the high seas. In particular, it defines the Exclusive Economic Zone (EEZ), which extends up to 200 nautical miles from the coast, within which the coastal State has sovereign rights over fisheries. UNCLOS outlines the rights and responsibilities of coastal States and fishing States with respect to the conservation and management of fisheries in the EEZ and elsewhere and sets out conditions of access for foreign vessels to fisheries in the EEZs of coastal States. Under article 61, coastal States have a responsibility through proper conservation and management to ensure that the living resources of the EEZ are not endangered by over-exploitation.

With respect to access by foreign vessels, the key concept is that of ‘surplus’. Coastal States are to determine both the total allowable catch (TAC) for their fisheries resources and the harvesting capacity of their fleet and are then to facilitate access for foreign vessels to fish any surplus<sup>71</sup>. A significant problem is that developing countries (including those in West Africa) often do not have the scientific and technical capacity to assess fisheries resources<sup>72</sup>. The Convention also provides guidance, but no fixed rules, on the conditions governing access by foreign fisheries. It states that such access is subject to any conservation measures and other terms and conditions established by the coastal State, and sets out a list of relevant conditions<sup>73</sup>. Many of are relevant to development issues in fisheries agreements, and the EU’s fisheries agreements reflect a substantial number of these conditions. In practice, however, coastal States have virtually unlimited discretion to determine both whether and how to provide access<sup>74</sup>. The fisheries provisions of UNCLOS form the basis, at the level

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<sup>70</sup> UNCLOS 1833 UNTS 3; signed 10 December 1982, in force 16 November 1994. For a recent assessment of the Convention, with special reference to the EU see R Barnes et al, *The United Nations Convention on the Law of the Sea: Developments, Challenges and Perspectives*, European Parliament Study, Doc. PE 363.792 (European Parliament, 2006).

<sup>71</sup> Arts 61-2 UNCLOS.

<sup>72</sup> It is noteworthy, however, that States (including the EU, through FPAs) are increasingly emphasising the concept of surplus in negotiating fisheries agreements.

<sup>73</sup> Arts 62(2) and (4) UNCLOS.

<sup>74</sup> The coastal State’s position is strengthened further by the fact that disputes relating to its discretionary powers for determining allowable catch and harvesting capacity are exempt from the Convention’s compulsory dispute settlement mechanism.

of general principles, of all the international instruments to follow, both binding and non-binding, global and regional, for the conservation, management and sustainable utilisation of marine living resources. Subsequent instruments provide the detail necessary to implement the principles in practice.

In Articles 63 and 64, the Convention sets out general principles regarding the conservation and sustainable use of transboundary stocks, requiring coastal States and fishing States to cooperate, either directly or through regional or subregional organisations. More detailed principles and rules regarding transboundary stocks are found in the 1995 UN Fish Stocks Agreement.

#### 4.1.2 *UN Fish Stocks Agreement*

The UN Fish Stocks Agreement aims to ensure the long-term conservation and sustainable use of straddling fish stocks and highly migratory fish stocks<sup>75</sup>. The Agreement is relevant to the EU and West African countries in a number of respects. First, the Agreement enunciates a number of general principles and comprehensive provisions for the conservation and management of fish stocks. Perhaps the most important are:

- Application of the precautionary principle (or approach) and the ecosystem principle (or approach), the requirement to conserve biodiversity and to minimise waste and bycatch
- an emphasis on management of fisheries through Regional Fisheries Management Organisations (RFMOs) or Arrangements (RFMAs), for which a long list of functions are given;
- the requirement for a flag State to be a member of or to cooperate with an RFMO, in order to have access to the stock(s) under its management;
- a long list of responsibilities of the flag State;
- very progressive provisions on enforcement;
- provisions for the collection and sharing of data (essential for accurate stock assessments); and
- provisions for assistance to developing countries.

In recent resolutions, the UN General Assembly has called for these provisions to receive more general application.

Secondly, since a number of important highly migratory stocks (mainly tuna) are present in West African waters the general principles in the Agreement apply to fishing these stocks both on the high seas and in waters under national jurisdiction<sup>76</sup>. This applies in particular to the requirement to apply the precautionary approach, which the Agreement spells out as including a system for using biological reference points in fisheries management<sup>77</sup>.

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<sup>75</sup> Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks, 2167 UNTS 3; signed 4 December 1995, in force 11 December 2001. For a recent assessment of the Agreement, with special reference to the EU see C Hedley et al, *Perspectives for the UN Fish Stocks Agreement*, European Parliament Study, Doc. PE 375.320 (European Parliament, 2007); see also C Hedley et al, *The Implications of the UN Fish Stocks Agreement (New York, 1995) for Regional Fisheries Organisations and International Fisheries Management*, European Parliament Working Paper Fish 112 (European Parliament, 2003).

<sup>76</sup> These include the application of the precautionary approach, basing measures on the best available scientific evidence, assessing the impact of fishing on the ecosystem and taking measures for associated species and taking into account the interests of artisanal and subsistence fishers: Arts 3, 5, 6 and 7 UNFSA.

<sup>77</sup> Despite this, ICCAT – the regional fisheries body responsible for tuna – has not yet adopted the precautionary approach (and there are disagreements among Members on its application): Hedley et al (2007), above at n 75, at p. 37. There is no formal implementation by coastal States, though the precautionary approach is reflected in Article 3 of Loi No. 98-32 portant Code de la Pêche maritime, 14 April 1998 (Senegal).

Thirdly, the Agreement obligates its parties, including the EU, to provide assistance to developing States and to take into account their special requirements. Particularly important are the vulnerability of developing States dependent on the exploitation of fisheries and the need to avoid adverse impacts on, and ensure access to fisheries by, subsistence, small-scale and artisanal fishers and women fishworkers.<sup>78</sup> It refers to various forms of cooperation, which include enhancing the ability of developing States to conserve and manage straddling fish stocks and highly migratory fish stocks and to develop their own fisheries for such stocks, assisting developing States to enable them to participate in high seas fisheries for such stocks, facilitating the participation of developing States in RFMOs, and providing assistance to improve conservation, management, scientific research and monitoring, control and surveillance. Some of these forms of cooperation are included by the EU in its fisheries agreements.

Finally, the Agreement requires States to cooperate to establish special funds to assist developing countries in the implementation of the Agreement. To that end an Assistance Fund was established by the UN General Assembly, which became operational in August 2004<sup>79</sup>.

## **4.2 NON-BINDING INSTRUMENTS**

### *4.2.1 The United Nations Conference on Environment and Development (UNCED)*

The 1992 UNCED, held in Rio de Janeiro, discussed issues of environment and development in all sectors and adopted a Declaration of Principles – the Rio Declaration – as well as Agenda 21, an action plan for the 21<sup>st</sup> century. Oceans and seas are covered in Chapter 17, which contains provisions on the sustainable use and conservation of marine living resources on the high seas and under national jurisdiction, including paragraphs on: management related activities; data and information; international and regional cooperation and coordination; scientific and technical means; human resource development; and capacity-building.

### *4.2.2 The FAO Code of Conduct for Responsible Fisheries*

While the UN was elaborating the UNFSA, the FAO was working on a more comprehensive non-binding instrument for the better conservation, management and sustainable utilisation of marine living resources<sup>80</sup>. The 1995 Code of Conduct is a non-binding instrument that establishes principles and international standards of behaviour for responsible practices in fisheries, processing and trade, with a view to ensuring the effective conservation, management and development of living aquatic resources, with due respect for the ecosystem and biodiversity. It recognises the nutritional, economic, social, environmental and cultural importance of fisheries, and the interests of all those concerned with the fishery sector. It takes into account the biological characteristics of the resources and their environment and the interests of consumers and other users.<sup>81</sup>

The Code provides principles and standards applicable to the conservation, management and development of all fisheries. It covers the capture, processing and trade of fish and fishery products, fishing operations, fisheries research and the integration of fisheries into coastal area management. The Code adumbrates a number of general principles, the first of which is that States and users of fisheries resources should conserve ecosystems: “The right to fish carries with it the obligation to do so in a responsible manner so as to ensure effective conservation and management of the living resources.”

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<sup>78</sup> Arts 24-26 UNFSA.

<sup>79</sup> For information, see [www.un.org/Depts/los/convention\\_agreements/fishstocktrustfund/tor\\_fund.pdf](http://www.un.org/Depts/los/convention_agreements/fishstocktrustfund/tor_fund.pdf). The fund is administered jointly by the UN and FAO.

<sup>80</sup> Although the Code is non-binding, it is based upon relevant rules of international law, and provides that it should be interpreted and applied in accordance with the LOSC, the UNFSA, the FAO Compliance Agreement (which is an integral part of the Code), the 1992 Declaration of Cancun, the Rio Declaration, Agenda 21 and other relevant declarations and agreements, as well as other applicable rules of international law.

<sup>81</sup> Text in “International Fisheries: instruments with index”, Division for Ocean Affairs and the Law of the Sea, United Nations, 1998. UN publication sales No E.98.V.11

The Code informs EU fisheries policy and is explicitly referred to in the texts of the FPAs. The following principles are particularly relevant:

6.2 Fisheries management should promote the maintenance of the quality, diversity and availability of fishery resources in sufficient quantities for present and future generations in the context of food security, poverty alleviation and sustainable development. Management measures should not only ensure the conservation of target species but also of species belonging to the same ecosystem or associated with or dependent upon the target species.

6.3 States should prevent over-fishing and excess fishing capacity and should implement management measures to ensure that fishing effort is commensurate with the productive capacity of the fishery resources and their sustainable utilization. States should take measures to rehabilitate populations as far as possible and when appropriate.

6.4 Conservation and management decisions for fisheries should be based on the best scientific evidence available, also taking into account traditional knowledge of the resources and their habitat, as well as relevant environmental, economic and social factors. States should assign priority to undertake research and data collection in order to improve scientific and technical knowledge of fisheries including their interaction with the ecosystem. In recognizing the transboundary nature of many aquatic ecosystems, States should encourage bilateral and multilateral cooperation in research, as appropriate.

6.5 States and subregional and regional fisheries management organizations should apply a precautionary approach widely to conservation, management and exploitation of living aquatic resources in order to protect them and preserve the aquatic environment, taking account of the best scientific evidence available. The absence of adequate scientific information should not be used as a reason for postponing or failing to take measures to conserve target species, associated or dependent species and non-target species and their environment. ...

Article 5 on the *Special Requirements of Developing States* is particularly relevant to the present report. Paragraph 1 provides that the capacity of developing countries to implement the Code should be taken into account. Paragraph 2 concerns assistance to developing countries, especially in the areas of financial and technical assistance, technology transfer, training and scientific cooperation and in enhancing their ability to develop their own fisheries.

Four international plans of action have been adopted to supplement the provisions of the Code. The most relevant for this study are the International Plan of Action to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing (IPOA IUU) and the International Plan of Action for the Management of Fishing Capacity (IPOA Capacity). The EU has accepted both IPOAs and is committed to their implementation.

*IPOA IUU.* The issue of IUU fishing is of serious and increasing concern, as it undermines efforts to conserve and sustainably manage fish stocks and can cause considerable economic and social losses to coastal States, because of the lost value of stocks and lost opportunities for legitimate and responsible fishers. IUU fishing also adversely affects food security and the environment. The IPOA sets out principles and measures to be adopted by all States to combat IUU fishing and is accompanied by technical guidelines. The WSSD called on States to implement the IPOA by 2004, but the problem persists.

*IPOA Capacity.* IUU fishing is the result of over-capacity. Fishers who cannot fish legally due the imposition of conservation measures will fish illegally or misreport their catches. Excessive fishing capacity has contributed substantially to over-fishing, the degradation of marine fisheries resources, the decline of food production potential, and significant economic waste. Technical advances in fishing equipment and techniques after 1950 and over-optimism as to the amount of fish available led to the construction of far too many fishing vessels with superior gear that enabled them to capture enormous quantities of fish. Governments encouraged this with generous subsidies. As a result, previously rich fishing grounds in the East and West Atlantic rapidly became over-exploited and depleted. The Code provides that States should take measures to prevent or eliminate excess fishing

capacity and should ensure that levels of fishing effort are commensurate with sustainable use of fishery resources.

#### 4.2.3 *Other instruments*

It is beyond the scope of this study to review every instrument relevant to fisheries management, fisheries development and coherence between the two. One other institutional process which does merit inclusion, however, is the provision of annual reports of the UN General Assembly on sustainable fisheries, and the corresponding resolution on the subject. Although the Resolutions are non-binding, they are taken seriously by States and are negotiated carefully because they represent important political statements. The latest resolution, adopted in December 2006<sup>82</sup>, requests distant-water fishing nations, when negotiating access agreements with developing coastal States, to do so on an equitable and sustainable basis, including by giving greater attention to fish processing, the transfer of technology and assistance for monitoring, control and surveillance, taking into account the forms of cooperation set out in Article 25 of the Fish Stocks Agreement; and encourages States to provide greater assistance and to promote coherence in such assistance for developing States in designing, establishing and implementing relevant agreements, instruments and tools for the conservation and sustainable management of fish stocks, including in designing and strengthening their domestic regulatory fisheries policies and those of RFMOs<sup>83</sup>. The resolution was adopted by consensus.

### 4.3 REGIONAL FISHERIES INSTRUMENTS

There are numerous other organizations in the West African region with some degree of responsibility for fisheries cooperation<sup>84</sup>. The most important are the various regional fisheries organizations: the International Commission for the Conservation of Atlantic Tunas (ICCAT); the Fishery Committee for the Eastern Central Atlantic (CECAF); the Sub-Regional Commission on Fisheries (SRCF); the Regional Fisheries Committee for the Gulf of Guinea (known by its French acronym, COREP); and the Ministerial Conference on Fisheries Cooperation among African States Bordering the Atlantic Ocean (known by its French acronym, COMHAFAT).

#### 4.3.1 *ICCAT*

The International Commission for the Conservation of Atlantic Tunas (ICCAT) was established in 1969 under an international agreement<sup>85</sup>. The EU is a member, as are most West African countries with which it has a fisheries agreement (Guinea Bissau and Mauritania are the exceptions) although several other West African countries do not participate<sup>86</sup>. The primary objective of the Commission is to maintain populations of tuna and tuna-like species in the Atlantic Ocean (including off the West African coast) at levels which will permit the maximum sustainable catch for food and other purposes<sup>87</sup>. Because the EU is a member of ICCAT, its measures are applicable to EU vessels fishing

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<sup>82</sup> UN General Assembly Resolution 61/105 on Sustainable Fisheries, including through the 1995 Agreement for the Implementation of the Provisions of the UN Convention on the Law of the Sea of 10 December 1982 relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks, and related instruments.

<sup>83</sup> Ibid, paras 100 and 101.

<sup>84</sup> In addition, ECOWAS provides for cooperation in the development of fisheries in order to ensure food security, increase production and productivity and improve conditions of work; also relevant are the Organization of African Unity (OAU); the Economic Commission for Africa (ECA); the African Development Bank (AfDB); and the West African Economic Community (WAEC).

<sup>85</sup> International Convention for the Conservation of Atlantic Tunas, Rio de Janeiro, 14 May 1966, 673 UNTS 63, in force, 21 March 1969.

<sup>86</sup> These are Gambia, Liberia, Nigeria, Sierra Leone and Togo.

<sup>87</sup> In total, about thirty species are of concern to ICCAT, including Atlantic bluefin, yellowfin, albacore and bigeye tunas; swordfish; billfishes, such as white and blue marlin, sailfish and spearfish; mackerels, such as spotted Spanish mackerel and king mackerel; and small tunas like skipjack, black skipjack, frigate tuna and Atlantic bonito. In practice, however, the focus of management effort has been on the large tunas, swordfish and



in West Africa. In any case, most West African fisheries agreements which provide tuna fishing opportunities expressly incorporate ICCAT standards.

ICCAT is supported by its own scientific committee – the Standing Committee on Research and Statistics (SCRS) – which collects data on all tuna and tuna-like species in the Atlantic and conducts regular stock assessments which are communicated annually to the ICCAT Commission. Within the SCRS, the Sub-Committee on Statistics reviews standards for data collection, reporting, verification and exchange of fisheries data. In addition, the Sub-Committees on By-Catch and Environment consider non-target species and the relationships of tunas and their environment. Consequently, scientific knowledge on tuna resources is substantially better than for other resources in the West Africa region.

#### 4.3.2 CEEAF

The Fishery Committee for the Eastern Central Atlantic (CEEAF) is an FAO subsidiary body, established in 1967<sup>88</sup>. Its area of competence broadly matches the region covered by this study<sup>89</sup>. It is also the only fisheries body in the region (except ICCAT) which accepts both coastal States and DWF States and the current membership includes 13 DWF members, in addition to 20 coastal State members (all coastal States in the West Africa region except Cameroon)<sup>90</sup>. The Committee's terms of reference are quite broad and its potential scope extends to most aspects of fishery development and management. These functions are implemented primarily by a Committee, composed of all CEEAF member countries, which is empowered to adopt (non-binding) recommendations. The Committee is supported by a Scientific Sub-Committee.

CEEAF is credited with several notable achievements, particularly in the period immediately following the extension of fisheries jurisdiction by West African coastal States, including: the establishment of a statistical system in 1980, and revised in 1988, which has been used as the basis for national statistical systems in a number of member countries; the recommendation of minimum mesh sizes for demersal species in 1979, which are implemented, but rarely enforced, in most member countries; encouraging coastal States to insist on logbook requirements; recommendations that the regulation of fishing effort should be given priority and that management measures should be adopted even in the absence of complete data; and suggesting procedures for the management of shared stocks<sup>91</sup>. However, a number of factors have constrained the functioning of CEEAF, particularly in recent years, including a lack of funding, a lack of commitment and an only occasional participation from some members and inadequate implementation of recommendations adopted by the Committee<sup>92</sup>. Furthermore, largely due to under-resourcing, the Scientific Committee does not have the capacity to comprehensively and accurately assess fish stocks in West Africa, and knowledge of resources is limited.

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certain billfishes. In the Atlantic, the EU has major interests in tuna fishing, including both on the high seas and in waters under national jurisdiction.

<sup>88</sup> The Committee was established by Resolution 1/48 of the FAO Council at its 48th Session, held in Rome in June 1967, and its Statutes were promulgated by the Director-General of FAO in September 1967.

<sup>89</sup> It covers the area of the Eastern Atlantic, almost exactly FAO Statistical Area 34.

<sup>90</sup> The coastal State members are: Benin, Cameroon, Cape Verde, Congo, Congo Democratic Republic, Côte d'Ivoire, Equatorial Guinea, Gabon, Gambia, Ghana, Guinea, Guinea Bissau, Liberia, Mauritania, Morocco, Nigeria, São Tomé and Príncipe, Senegal, Sierra Leone and Togo. The distant-water members are the EU, Cuba, France, Greece, Italy, Japan, Korea, Netherlands, Norway, Poland, Romania, Spain and the United States.

<sup>91</sup> See CEEAF, *Options for Long-Term Institutional Arrangements for Fishery Management in the Eastern Central Atlantic*, CEEAF Doc. XV/2000/6, Appendix IV; J Carroz and M Savini, 'Les Accords de Pêche Conclus par les Etats Africains Riverains de l'Atlantique' (1983) 26 *Annuaire Français de Droit International* 674, at pp 698-699; and T Goffinet, 'Development and Fisheries Management: the Case of Northwest Africa' (1992) 17 *Ocean and Coastal Management* 105, at p 120.

<sup>92</sup> CEEAF, *ibid*, at para 8.

#### 4.3.3 SRCF

The Subregional Commission on Fisheries (SRCF) was established in 1985<sup>93</sup>, following almost ten years of cooperation in other forms. The Convention is open for accession only to coastal States in the subregion, which includes the seven members – Cape Verde, Gambia, Guinea, Guinea-Bissau, Mauritania and Senegal – and six other countries: Benin, Côte d'Ivoire, Ghana, Liberia, Sierra Leone and Togo. The objectives of the Commission are to harmonize the long-term policies of its members relating to the preservation, conservation and exploitation of their fisheries resources and to strengthen cooperation amongst members<sup>94</sup>. The main decision-making body is the Conference of Ministers, which meets at least every two years, supported by a Coordinating Committee, a Permanent Secretariat and ad hoc Working Groups. There is no scientific committee. The Coordinating Committee is composed of senior fisheries officials and experts and is the main advisory body to the Conference of Ministers; it is required to meet at least once a year<sup>95</sup>, but in practice has met more regularly, typically two or three times per year in recent years.

To an extent, the SRCF has been rather successful at encouraging cooperation and harmonization amongst its Member States. Various reference documents have been created (e.g. on the status of observers and the marking of fishing vessels), various sub-regional enforcement capacity-building and operational exercises have been developed, and considerable work is currently being done in relation to national and regional VMS, which was identified as a priority issue in the Commission's 2002-2010 Strategic Plan of Action. Furthermore, several legal documents have been adopted under its auspices, including a convention on conditions of access for foreign fishing vessels<sup>96</sup>; a convention on cooperation in the exercise of hot pursuit<sup>97</sup>; a protocol regarding practical modalities for the coordination of surveillance activities<sup>98</sup>. The instruments have not been extensively or evenly applied, however, and have rarely been enforced. The minimum requirements in the convention on conditions of access, for example, have only been rarely (and then only partially) been insisted on in EU fisheries agreements. Ultimately, the types of factors that have constrained the functioning of CECAF have also been constraining factors for SRCF which, in practice, has not been able to fulfil its potential as a sub-regional organization.

#### 4.3.4 COREP

The Regional Fisheries Committee for the Gulf of Guinea (COREP) was established by an international agreement in 1984<sup>99</sup>, although the agreement has never entered into force and the organization has never functioned formally or regularly. Membership is limited to coastal States of the subregion, and comprises Congo, Democratic Republic of Congo, Gabon and São Tomé and Príncipe. The Committee has objectives broadly similar to those of SRCF, namely to determine a concerted attitude towards the activities of foreign fishing vessels and to give priority to the needs of the fishing vessels originating from member countries; to harmonize the national regulations with a

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<sup>93</sup> Convention for the Establishment of a Sub-Regional Fisheries Commission, Dakar, 29 March 1985, in force 1989. The Convention was amended in 1993.

<sup>94</sup> Art 2.

<sup>95</sup> Art 11.

<sup>96</sup> Convention regarding the Determination of Conditions of Access to and Exploitation of Fisheries Resources off the Coasts of the Sub-Regional Fisheries Commission Member States, Praia, 14 July 1993. Among the access conditions specified are minimum mesh sizes (Art 5 and Annex II); certain requirements relating to the marking of vessels (Art 6), communicating entry and exit, a fishing plan and, periodically, position (Art 7); landing catches in domestic ports (Art 9); taking on nationals as crew members (Art 11); and action to be taken in the case of serious infringements (Art 12).

<sup>97</sup> Convention on Subregional Cooperation in the Exercise of Maritime Hot Pursuit, Conakry, 1 September 1993.

<sup>98</sup> Protocol on Methods of Coordination of Surveillance Operations in the Member States of the Sub-Regional Fisheries Commission, 1993. No information appears to be publicly available on this Protocol.

<sup>99</sup> Convention concerning the Regional Development of Fisheries in the Gulf of Guinea, Libreville, 21 June 1984, not in force. The text of the Convention does not appear to be publicly available. Information on the Convention and the Commission is taken from the *Internet Guide to International Fisheries Law*, [www.intfish.net/orgs/corep.htm](http://www.intfish.net/orgs/corep.htm).

view to having a unified regulation fixing the conditions of fishing and the control of fishing operations in the area covered by the Convention; and to collect the maximum scientific, technical and economic data on fishing operations. Although in recent years the Committee has met several times, few such initiatives have been developed.

#### 4.3.5 *COMHAFAT*

The Ministerial Conference on Fisheries Cooperation among African States bordering the Atlantic Ocean (COMHAFAT), which is open to all States on the African Atlantic coast, was established by an international agreement in 1991<sup>100</sup>. The Conference has 13 member States, of which eleven are from the region covered by this study<sup>101</sup>. Its objectives are widely defined and include: promoting cooperation in fisheries conservation, management and development in the region, including the monitoring, surveillance and control of fishing vessels; increasing food self-sufficiency through the rational utilization of fishery resources; stimulating the national economic sectors through the direct and secondary effects resulting from fishery resources exploitation; and enhancing, coordinating and harmonizing efforts and capabilities for the purpose of conserving, exploiting, upgrading and marketing fishery resources<sup>102</sup>. In practice, the Conference has only acted within a much smaller range of activities, although it is credited with contributing to the identification of a number of projects which have been carried out or are on-going in the region, particularly in the areas of monitoring control and surveillance (MCS), the application of GIS, training on various aspects of fisheries and improvement in the legal frameworks of member countries.

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<sup>100</sup> Convention on Fisheries Cooperation among African States Bordering the Atlantic Ocean, Dakar, 5 July 1991, (1991) 19 LOSB 33, in force, 11 August 1995.

<sup>101</sup> The parties to the Convention are: Angola, Benin, Cape Verde, Congo (Dem. Rep.), Côte d'Ivoire, Equatorial Guinea, Gabon, Guinea, Guinea-Bissau, Morocco, Nigeria, Senegal and Sierra Leone.

<sup>102</sup> Art 2.

## 5 THE COMMON FISHERIES POLICY

This section considers the two EU fisheries related policies as they relate to West Africa are principally concerned with two aspects: fisheries access agreements (considered in this section) and trade (considered in the next section). However, other elements of the Common Fisheries Policy (CFP) are also relevant (and will therefore also be considered here), in particular including components dealing with illegal, unreported and unregulated (IUU) fishing and with structural/fleet policy<sup>103</sup>. All of these elements must be set against the legal framework for the EU's relations with developing (ACP) countries, the Cotonou Agreement.

### 5.1 LEGAL FRAMEWORK

In addition to the international fisheries law framework, described in the previous section, there is a second strand setting the legal framework for development coherence in the Cotonou Agreement and its various predecessors. These agreements have provided the general framework for the EU's relations with developing countries in West Africa and other regions for more than 40 years, covering both the application of development policy directly (primarily the provision of aid) and the relationship between development policy and other policies, primarily trade but also other policies, including fisheries. The first Conventions, known as the Yaoundé Conventions, were concluded in 1963 and 1969 between the original six members of the Community and many of their former (mainly French) colonies, followed by the series of Lomé Conventions which provided the framework for development cooperation between 1975 and 2000<sup>104</sup>. In 2000, a new – and somewhat different Agreement was adopted – the Cotonou Agreement is the current framework instrument.

#### 5.1.1 *Lomé Conventions*

The Lomé Conventions established a system for the provision of aid to ACP parties, provided for non-reciprocal free trade for most ACP products into the EU (including fish and fish products), and provided a general framework for development cooperation in a wide-range of fields, including fisheries. The objectives of such aid cooperation under these Conventions was to: improve the knowledge of the fisheries environment and resources; increase the means of protecting fisheries resources and monitoring their exploitation; increase the involvement of ACP States in exploiting their own fisheries within their EEZ; encourage reasonable exploitation of those resources; increase the contribution of aquatic resources to economic growth, food security and the fight against poverty; and increase the contribution of fisheries to industrial development by increasing catches, output, processing and exports<sup>105</sup>. The forms of support envisaged by the Conventions included: in the area of fisheries production, the acquisition of boats, equipment and gear and the development of infrastructure for artisanal fishing communities and the fishing industry; in the area of fisheries management and protection, the assessment of fish stocks, the improvement of environment monitoring and control and the development of ACP States capacities for the rational management of the resources in their EEZs; and, in the area of processing and marketing of fishery products, the development of processing, collection, distribution and marketing facilities, the reduction of post-harvest losses and the promotion of programmes to improve fish utilization and nutrition from fishery products<sup>106</sup>. On the basis of these provisions, the Community funded hundreds of fisheries development projects, both in countries with which it had fisheries agreements and those with which it did not. These projects covered a variety of matters, including training, infrastructural and financial

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<sup>103</sup> This list is not exhaustive; many other elements might be identified include participation in international organizations, control and enforcement, port State controls, etc. To the extent relevant, these will be considered within the existing sections of this section.

<sup>104</sup> ACP-EEC Convention of Lomé, Lomé, 28 February 1975, [1976] OJ L 25/2; in force, 1 April 1976. Second ACP-EEC Convention, Lomé, 31 October 1979, [1980] OJ L 347/1; in force, 1 January 1981. Third ACP-EEC Convention, Lomé, 8 December 1984, [1986] OJ L 86/3; in force, 1 May 1986. Fourth ACP-EEC Convention, Lomé, 15 December 1989, [1991] OJ L 229/3; in force, 1 September 1991.

<sup>105</sup> Art 51 Lomé III and Art 59 Lomé IV.

<sup>106</sup> Art 52 Lomé III and Art 60 Lomé IV.

assistance, the development of artisanal fishing, port development, research assistance, the development of processing facilities, the improvement of monitoring and surveillance capacities and marketing and commerce training.

These agreements (in particular Lomé III and Lomé IV) also set out the framework for fisheries access agreements between the EU and ACP States<sup>107</sup>. Thus, the ACP States expressly recognized the potential role of the Community fleet in the development of coastal ACP State fishery potential and in economic development in general in the coastal ACP States<sup>108</sup> and to that end declared “their willingness to negotiate with the [EU] fishery agreements aimed at guaranteeing mutually satisfactory conditions for fishing activities of [EU vessels]”<sup>109</sup>.

The Conventions also addressed various matters relevant to development coherence, for example by providing that the agreements could include measures such as obligatory landing of part of the catch, employment of ACP nationals, the taking on board of observers, the transfer of technology, research and training grants<sup>110</sup> and by supporting the development of (regionally) harmonized arrangements for access for fishing vessels<sup>111</sup>.

### 5.1.2 Cotonou Agreement

The Lomé IV Convention expired at the end of February 2000 and was eventually replaced by a new agreement – known as the Cotonou Agreement – in June 2000<sup>112</sup>. This agreement – although based on the same broad objectives – substantially revised a number of the basic principles and priorities of the ACP-EU relationship and replaced the long-standing system established by the Lomé Conventions, including the provisions on fisheries. There were several reasons for the changes. First, the generally held view was that the results of 25 years of cooperation under the Lomé Conventions had been mixed. Evaluations of Community financial aid in the ACP countries often showed that insufficient account had been taken of the institutional and policy context in the partner country which undermined the viability and effectiveness of cooperation. It was considered that there was a need for the recipient countries to have greater control of the development agendas, and to be able to determine their own priorities with greater autonomy. Similarly, it was recognized that development aid should be more participatory, and that there should be closer involvement of civil society, the private sector and the economic and social actors in the recipient countries. At the same time, both sides recognized the need to adapt to legal, institutional and political developments at the international level, including, *inter alia*, the need to ensure that cooperation was consistent both with principles of sustainable development and environmental protection and, insofar as the agreement was concerned with trade, that cooperation was consistent with international trade rules, including those established through the World Trade Organization (WTO).

All of these objectives are reflected in the agreement that was eventually adopted. Thus, the new Agreement requires, among its fundamental principles, that ACP-EU cooperation is to be based on the “equality of the partners and ownership of the development strategies”<sup>113</sup> and on “participation” by all sections of society, in addition to the government of the partner country<sup>114</sup> and is to promote sustainable development and poverty eradication<sup>115</sup>. The protection of the environment is also

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<sup>107</sup> A further, but separate, facet of the Community’s development cooperation under the Conventions concerned international trade, including trade in fisheries products. This is discussed in Section 5.

<sup>108</sup> Ibid, Arts. 55 and 64, respectively.

<sup>109</sup> Ibid.

<sup>110</sup> Ibid.

<sup>111</sup> Ibid, Arts 57 and 66, respectively.

<sup>112</sup> Partnership agreement between the members of the African, Caribbean and Pacific Group of States of the one part, and the European Community and its Member States, of the other part, Cotonou, 23 June 2000, [2000] OJ L 317/3 (“the Cotonou Agreement”). The new agreement will apply for 20 years, with a clause allowing for revision every five years and a financial protocol for each five-year period.

<sup>113</sup> Art 2, first indent of the Cotonou Agreement.

<sup>114</sup> Ibid, second indent.

<sup>115</sup> These latter themes are emphasized throughout the Agreement, but see in particular the Preamble (second recital) and Arts 1 and 9.

included among the objectives of the Agreement<sup>116</sup>, and the need for ACP-EU relations to be consistent with international trade rules is also emphasized<sup>117</sup>.

## 5.2 FISHERIES ACCESS AGREEMENTS

For present purposes, fisheries access agreements are agreements between a coastal State and another State for the purpose of providing the fishing vessels of the latter with fishing opportunities in the waters of the former. The need for such agreements arose during the 1970s, when the vast majority of the world's coastal States, including most EU Member States, extended their jurisdiction over fisheries and certain other resources from (in most cases) 12 miles to 200 miles in the form of exclusive economic zones (EEZs) or exclusive fishing zones (EFZs). These extended claims had the effect of bringing 90 to 95 per cent of commercial fisheries within the authority of coastal States with the result that the vessels of many States, including several Member States, which had traditionally fished off the coasts of these States were excluded. It therefore became necessary to negotiate agreements with coastal States for access to their fisheries zones in order to maintain, as far as possible, fishing opportunities for the EU's distant-water fleet.

Over the past three decades, the EU has negotiated agreements with more than 30 countries. Approximately a third of these were with neighbouring coastal States (most of which are now EU Member States), providing for a reciprocal exchange of fishing opportunities, while the remainder were concluded primarily with developing States, providing access for the EU fleet to their waters. Of this latter type, approximately half of which were with countries in the West African region<sup>118</sup>.

These agreements are a significant component of the CFP. They account for approximately 10 per cent of the total EU catch by volume and by value and – at their peak – accounted for an average of more than EUR 900 million value-added annually to the EU economy, of which more than EUR 550 million derived from agreements with West African coastal States<sup>119</sup>. Although significant in economic terms alone, the agreements are also important for other reasons: they provide significant fishing opportunities for certain sectors of the EU fleet for which there are only limited opportunities in EU waters and for which there are few alternatives for redeployment, either within or outside EU waters; they provide substantial levels of employment and income to regions dependent on fishing, some of which are dependent specifically on the fisheries agreements; they contribute significantly to the supply of fisheries products to the EU market; and, in some cases, they are strategically important for other fleet sectors, facilitating greater productivity and efficiency<sup>120</sup>. The main beneficiaries of the agreements with West African States are southern Member States, and in particular Spain. In virtually all of the agreements, Spain is allocated the largest share of fishing opportunities. Portugal, France and Italy are also important fishing States under these agreements. Several other Member States have limited interests in some of these agreements.

### 5.2.1 *Evolution of EU fisheries agreements*

Although there is no single type of fisheries agreement, the agreements the EU has concluded with West African (and other ACP) countries have been broadly similar. The basic arrangement in each

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<sup>116</sup> Ibid., Art. 1.

<sup>117</sup> Ibid., Art. 10(2).

<sup>118</sup> Within the West Africa region the EU has concluded agreements with (in chronological order): Senegal, Guinea Bissau, Guinea, São Tomé and Príncipe, Equatorial Guinea, Gambia, Mauritania, Cape Verde, Sierra Leone, Côte d'Ivoire, Morocco and Gabon. Elsewhere, agreements of this type have been concluded with: Greenland, Seychelles, Madagascar, Mozambique, Angola, Mauritius, Comoros, Tanzania, Federated States of Micronesia, Kiribati and Solomon Islands.

<sup>119</sup> IFREMER, pp 85-86. This figure is calculated from the period 1993-1997, when the EU had 21 fisheries access agreements with third countries, including very substantial agreements with a number of countries, notably Morocco (which accounted for approximately EUR 350 million value-added by itself), Mauritania, Senegal, Seychelles, Angola and Norway.

<sup>120</sup> For example, in tuna fisheries access to the waters of third countries is often necessary in order to allow the continuity of fishing operations even though significant quantities of fish may not actually be caught in the waters of the coastal State.

case is the provision of fishing opportunities for the EU fleet in the waters of the third country in return for financial payments. The agreements are frameworks, setting out the general principles for cooperation, with details on matters such as quantification of fishing opportunities, conditions for fishing operations and the financial payments to be made by the EU are established on the basis of periodically adopted protocols. Typically, at least for the agreements with West African States, the protocols have lasted for two or three years, although recently the EU has been attempting to negotiate protocols of longer duration (of five or six years, in some instances). In most cases, the counterpart for EU fisheries access is a combination of financial compensation (which is usually paid directly to the Treasury of the third country and its use is determined solely by that country), financial contribution to the fishery sector, for example by financing scientific or technical programmes, and the payment of licence fees (paid by the vessel owners, rather than the EU). In addition to this, many of the agreements contain provisions relating to the landing of catches in local ports, the employment of national fishermen and other conditions designed to assist the domestic fishery sector of the West African country.

These agreements have been controversial and have attracted criticism from almost every angle. From the point of view of conservation, they have been criticized for allowing overfishing and leading to the depletion of stocks in the waters of the countries concerned; from the point of view of social benefit and development of the third countries, they have been criticized as stifling the development of the third country fishing industries, for not providing the third countries with an equitable share of the proceeds of fishing operations and for conflicting with EU and coastal State development policy priorities; and from the point of view of economics, they have been criticized, on the one hand, for depriving the third countries of realizing the full economic benefit of their fisheries resources and, on the other hand, for being too costly and creating an excessive burden on the EU budget and for being poor value-for-money in terms of the actual fishing opportunities generated and utilized.

These criticisms have led to several reviews of the manner in which the agreements were negotiated, framed and operated. A new model was developed in the early 1990s (so-called “second generation” agreements) which relied on the setting up of joint ventures and joint enterprises as the means of access, but only one agreement based solely on joint ventures/enterprises was ever concluded (with Argentina) and this approach was never used, even partially, in the West Africa agreements.

This led to a third phase (sometimes termed “third generation” agreements, although the agreements were in fact continuations of the original type) during which the EU started to pay more attention to development issues, for example, by devoting increasing proportions of the financial contribution to targeted actions, such as scientific and technological cooperation, employment of nationals from African States and monitoring and control. There was only limited success, however, in developing the local fisheries sector, in transfer of technology, capital investment and regional aspects and in the monitoring and control of fishery activities.

### 5.2.2 *Criticisms of fisheries agreements*

The following reviews some of the major criticisms of the EU’s fisheries agreements in West Africa, in particular as they relate to issues of development coherence. The information throughout this section is taken from various sources which have reviewed practice under EU fishing agreements over the past 25 years<sup>121</sup> and focuses on the operation of the agreements prior to the reform of the CFP in 2002.

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<sup>121</sup> The primary studies on which this section relies are: J. Carroz and M. Savini, ‘Les Accords de Pêche Conclues par les Etats Africains Riverains de l’Atlantique’ (1983) 26 *Annuaire Français de Droit International* 674; S. Sen, *European Community Fisheries Agreements with African, Caribbean and Pacific States*, Samudra Dossier Number 4 (Brussels, International Collective in Support of Fishworkers, 1991); European Parliament, *European Community Fisheries Agreements with Third Countries and Participation in International Fisheries Agreements*, Working Paper No. 9 (Brussels, 1993); S. El Djamil Abada, ‘ACP-EU fishing agreements: Accord or discord? ‘Keep to the spirit’ appeal by Joint Fisheries Committee’ (1996) 156 *The Courier ACP-EU* 10; European Parliament, *Report on International Fisheries Agreements*, A4-0149/97, 22 April 1997; House of Lords (UK), Select Committee on the European Communities, *Third Country Fisheries Agreements*, 3<sup>rd</sup> Report,

### *Absence of stock assessments*

One of the central problems in West African fisheries is the poor state of scientific knowledge concerning fish stocks in the region. This stems both from inadequate – but improving – scientific infrastructure (both in many individual countries and regionally) and from a long-standing lack of commitment to carry out scientific studies to assess West African fisheries. Consequently, fishing has generally taken place with no prior scientific assessment of the stocks and no scientific determination of a total allowable catch (TAC) or other fishing effort level. Fishing opportunities were fixed as part of a commercial transaction in which the objective for the EU was to maximize fishing opportunities for the fleet and in some cases the EU has even sought (and sometimes obtained) access to resources which were considered to be fully or over-exploited (e.g. as occurred in Mauritania and Senegal). The absence of scientific assessments has also made it difficult to determine the impact EU (and other) fishing has had on the status of fish stocks. However, what scientific evidence is available, combined with a considerable volume of anecdotal evidence, collected primarily by NGOs, suggests that some fisheries may have been subject to significant overfishing. In addition to NGOs, this has also been the long-standing view of the European Parliament, which has collected its own evidence anecdotally, and has now been accepted by the Commission.

### *Definition of fishing opportunities*

The use of total allowable catches (TACs) and quotas as management tools, although a common form of managing fishing effort elsewhere, are not much used in the EU's (or other distant-water countries') agreements with West African countries. This partly flows from the problems of inadequate scientific information outlined previously, which means that it is difficult for coastal States to estimate abundance of fish, total allowable catches and, therefore, individual quotas, although it also results from the fact that the coastal States in the region have traditionally lacked the resources to enforce such quotas. Consequently, only very rarely have fishing opportunities under these agreements been expressed in terms of quotas or catch limits. Instead, the main means of determining the extent of fishing possibilities has been by limiting the level of fishing effort usually, in the case of trawlers, by reference to the average monthly gross registered tonnage of vessels (over a year) or, in the case of tuna vessels, by specifying the number of vessels that are licensed to fish. However, the amount of fish caught depends on neither criterion independently and there are several other relevant factors: these include, *inter alia*, the size of the ship, the power of its motor and equipment, the type of equipment, the skill of the officers and crew, the type of processing onboard, whether it is bunkered offshore or has to go into port and whether it can tranship at sea instead of in port<sup>122</sup>. Effective definitions of fishing opportunities and effort need to be able to control all of these factors.

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Session 1996-97 (HMSO, 1997); Marine Resources Assessment Group, *Conflict and Coherence with EU-ACP Third Country Fishing Agreements: A Study Review* (Marine Resources Assessment Group, 1998); WWF, *The Footprint of Distant Water Fleets on World Fisheries* (WWF, 1998); Greenpeace, *Pirate Fishing, Plundering West Africa* (Greenpeace International, 2001); Aide à la Décision Economique (ADE), *Evaluation of the Relationship between Country Programmes and Fisheries Agreements*, Evaluation Report for the European Commission, Brussels, November 2002; B Gorez and B O'Riordan, *An Examination of Fisheries Relations between the European Union and ACP Countries*, Paper presented at the International Seminar on ACP/EU Fisheries Relations: Towards Mutual Benefits, Brussels, 7-9 April 2003; Greenpeace, *Illegal, Unreported and Unregulated (IUU) Fishing in West Africa*, Submission to the Technical Consultation to Review Progress and Promote the Full Implementation of the IPOA to Prevent, Deter and Eliminate IUU Fishing and the IPOA for the Management of Fishing Capacity, June 2004; B Gorez, *Policy Study: EU-ACP Fisheries Agreements*, Report for DFID, March 2005; and Greenpeace, *Witnessing the Plunder 2006: How Illegal Fish from West African Waters Finds its Way to the EU Ports and Markets* (Greenpeace, 2007). Further references, including country specific studies, are provided in the bibliography. Additional information has also been taken from the various reports of the European Parliament on the conclusion of fisheries agreements and protocols adopted under them (available on the Committee on Fisheries website: [www.europarl.europa.eu/committees/pech\\_home\\_en.htm](http://www.europarl.europa.eu/committees/pech_home_en.htm)) and from various media reports on the negotiation and operation of the agreements.

<sup>122</sup> See, eg, European Commission, *Communication on Implementing Sustainability in EU Fisheries through Maximum Sustainable Yield*, COM(2006) 360, 4.7.2006; and *Communication on Improving Fishing Capacity and Effort Indicators under the Common Fisheries Policy*, COM(2007) 39, 5.2.2007.



It was not originally envisaged that the – rather crude – system of fixing fishing opportunities in terms of vessel capacity or vessel numbers would be utilized in the long-term, because coastal States would develop research, management and enforcement capabilities they needed to move towards a quota-based system of management<sup>123</sup>. In practice, however, such development has not occurred to any significant degree and most coastal States in this region are still not in a position to implement a quota-based system.

#### *Inconsistent / inadequate technical conservation measures*

The extent to which technical conservation measures have been included in agreements varies. In the case of tuna fishing, reference is usually made to ICCAT standards (which are in any case applicable to the EU as a member of that organization). As regards other fishing, measures are included in the protocols, although there is much variation from agreement to agreement. Typically, however, such measures might include mesh-size regulations, limits on bycatch, biological rest periods and gear restrictions. The purposes of such measures include: preventing stock depletion; minimizing catch of non-target species and undersized/juvenile fish; minimizing ecosystem impacts; and reducing competition/conflict with domestic fisheries.

Two major criticisms have been directed at the application of technical conservation measures in the agreements. First, that the EU has not applied the same standards to the fisheries agreements (which often contained limited conservation measures) that it applied under the CFP in EU waters (where very detailed conservation measures were often applied). Second, that measures (or at least, the EU negotiating position on measures) were not based on scientific assessment but on industry pressures. Both assertions were for a long time denied by the Commission, which observed that different fisheries required different management measures and that there was no lack of concern for technical conservation in the negotiations for agreements. Owing to the lack of scientific information and the fact that the negotiations for fisheries agreements are generally conducted behind closed doors, it is not possible to say to what extent there were legitimate scientific reasons for these inconsistencies and to what extent it is the product of negotiations between the two parties concerned but anecdotal evidence<sup>124</sup> suggests that intensive lobbying from the fishing industries on both sides was an important factor.

#### *Conflict with small-scale fisheries*

Conflict between industrial fishing and artisanal and other small-scale fisheries can occur in several ways, e.g.: competition for the same resources, both directly (fleets targeting the same resource) and indirectly (industrial fleet takes small-scale target catch as bycatch); gear conflicts when vessels occupy the same fishing grounds; and destruction of sensitive habitats such as reefs and seagrass beds (fish nursery grounds and biodiversity hotspots). The consequences for small-scale fisheries include various livelihood threats, in particular financial losses from replace gear or reduced catches and possible unemployment.

Cases of conflict involving EU (and other DWF) vessels have been well documented. In some cases the conflict is accidental, but often it is deliberate as fisheries close to shore often support high value species, such as shrimp and allow higher fish densities (in shallow waters). Although most fisheries agreements do not refer to protection of small-scale or other local fisheries, all have provided at various times for such protection through the protocols, principally by prohibiting fishing within the coastal zone. Because of the nature of the different types of conflict and limited or non-existent enforcement of domestic regulations, these measures appear only to have partially resolved conflict issues, however.

#### *Support for development of domestic fishing industry*

The policy of granting access to foreign fleets (both distant water and of neighbouring countries) was initially seen as a provisional situation by many West African countries and as a first step in the process of national development leading to the establishment of domestic fishing industries capable of

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<sup>123</sup> See CECAF, *Report of the 8th Session of the Fishery Committee for the Eastern Central Atlantic*, FAO Fisheries Report No. 282 (FAO, 1982), p. 5.

<sup>124</sup> Primarily media reports surrounding negotiations for renewal of the various protocols.

fully exploiting the fishery resources in their EEZs. Accordingly, several of the EU's early agreements, and all of its later agreements, contained measures designed to promote the domestic industry. Principally three types of measure have been included: requirements to land certain proportions of catches at local ports; employment of national crew; and financial contributions to support the domestic fisheries sector. It is a widely held view, however, that these measures have provided only modest benefits to the developing States concerned and their local industries.

▪ *landing of catches*

The inclusion in an agreement of a requirement to land a certain proportion of catch in the ports of the third country can be a potentially significant measure for that country. Such landings may provide food for the local population and may also create substantial employment in the processing and distribution services which may, in turn, provide much needed export revenue. However, in practice these benefits have not been extensively realised. Constraints have included: the fact that, particularly in earlier agreements/protocols, landings were not obligatory or could be avoided by the payment of a fee, meaning that often landings did not take place; inadequate local infrastructures and facilities in many countries to be able to accept landings from EU vessels; and, in some instances, where landings did actually take place, depressing of local prices through over-supply<sup>125</sup>.

▪ *employment of local seamen*

As with the landing provisions, requirements in agreements/protocols to employ a certain proportion of domestic fishers on board have not realised extensive benefits. In most agreements an option has been provided for the vessel owner to opt-out of the requirement to take on board local crew members by paying all or a proportion of the wage that a national would have received to the third country authorities (which only in a few cases, e.g. under the agreements with Mauritania, was to be used to enable the training of fishers domestically). This has the effect of increasing revenue to the third country only marginally and deprives the domestic fishing industry of potentially valuable employment and training. Furthermore, when crew members have been taken on board it has been alleged that the third country fishers have frequently been given menial tasks to do and are provided with minimal training.

- *financial measures*

The earlier agreements with West African countries provided that part of the financial compensation provided by the EU should be used for projects related to the development of the fishing industry of the third country. This was the case for Senegal (projects and services of a rural nature, in particular relating to sea fishing); Guinea Bissau (projects relating to sea and fresh-water fishing; and Guinea (projects and services relating to fishing). In practice, however, only relatively small proportions of the EU's financial contribution was directed towards fisheries related projects, with the majority of funds being paid directly to the treasuries of the States concerned with little or no accountability. In later agreements, this strategy was therefore abandoned, with no directions being included on the use to be made of the funds<sup>126</sup>.

Since the mid-1990s, however, it has been Community policy, when negotiating new protocols under the agreements, to attempt to dedicate certain proportions of funds to specific fisheries related programmes. Originally the proportions were quite small, but, largely because of pressure from, among others, the European Parliament, these have been gradually increased over the years and under most agreements at least 50 per cent of the Community financial contribution is now dedicated to the fisheries sector. The range of matters to which the contribution is dedicated has also broadened compared to what was envisaged under the early agreements, and now funds are commonly dedicated to matters such as scientific and technical programmes, monitoring and surveillance, awards and

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<sup>125</sup> See M K Kelleher, 'Assessing the Impact of Foreign Fishing Agreements in West Africa' in B Dioh et al (eds), *Fisheries Access Agreements in West Africa* (FAO, 1997) who presents the experience of the Mauritanian Cephalopod Marketing Organisation (SMCP).

<sup>126</sup> The only exceptions to this were the three agreements with Morocco and the later agreements with Mauritania, which all expressly provided for additional contributions for matters such as support for scientific programmes and operations, training for nationals in the fisheries sector and research and monitoring.

study grants for training in fisheries related disciplines, assistance for small-scale and artisanal fishing and support for the participation of the third State in international organizations and meetings.

Although West African countries have certainly benefited from these financial investments, it is the widely-held view that the actual benefits accruing have not been completely fulfilled. A problem, particularly in the past, was that there was no monitoring on the use of the funds and they were often poorly utilized. In more recent years the Commission has attempted to monitor and control the use of funds more closely, but it has not always done so in a helpful manner (for example, funding for research programmes tended to target high-value species, like tuna, that are exported, rather than species that could be harvested by the local coastal fishermen to supply domestic markets). The fundamental point for many observers is that after 20 or so years of such funding, the domestic fishing industries in West Africa have not progressed significantly.

#### *Compliance and enforcement*

Although all agreements provide for a variety of measures designed to monitor fishing activity by EU vessels, the requirements are not generally extensive (although have become more sophisticated in recent years), have often been imprecisely defined and there has been a general problem of implementation as the coastal States have often lacked the structures and resources necessary for such purposes.

The attitude of the EU for many years was that generally the responsibility for surveillance and enforcement lies with the coastal State, rather than with itself as the “flag State” and for many years was unwilling to provide to any significant degree equipment or funding for these purposes. However, in recent years, following considerable pressure from the European Parliament and interest groups, more attention has been paid to the development of such measures. This has had two principal results. First, as has been mentioned, the protocols have provided for the apportionment of certain parts of the financial compensation paid by the Community to projects related to monitoring and surveillance. It is clear that such financing has helped the coastal States to develop their monitoring and enforcement capabilities, although it is difficult to make any kind of qualitative assessment of improved enforcement. The second result is that more comprehensive measures relating to monitoring and enforcement have been introduced into the agreements, particularly those which are of the mixed type (e.g. more comprehensive observer provisions, requirements for vessel inspections before fishing; and procedures for boarding and inspecting vessels). Recent anecdotal evidence suggests that the monitoring and enforcement measures are still inconsistently applied.

#### *Ineffective institutional process (Joint Committees)*

All agreements provide for the establishment of a Joint Committee, to meet either on an annual basis or at the request of one of the parties, to oversee the implementation of the agreement. Except in a few cases, the role and functions of these Joint Committees are not specified in the agreements but the types of function envisaged include: supervision of the implementation, interpretation and proper functioning of agreements; acting as the point of contact in matters of common fisheries interest; examining matters relating to fishing opportunities, financial compensation and licence fees; oversee or adopt programmes and operations in the fisheries sector; etc. Under most agreements, however, meetings of the Joint Committees have occurred only irregularly.

#### *5.2.3 Reform of the Common Fisheries Policy*

The review process for reform of the CFP began in March 2001, when the Commission published a series of reports on the fisheries situation in the Community<sup>127</sup> and a Green Paper on the Future of the Common Fisheries Policy<sup>128</sup>, both of which outlined the weaknesses and difficulties of the existing CFP and presented a number of options for its reform. The reports indicated that the Commission was largely aware of the problems regarding third country fisheries agreements. Among the problems identified in the Green Paper were:

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<sup>127</sup> SEC(2001) 418, 419 and 420.

<sup>128</sup> Supra.

- insufficient scientific knowledge relating to the state of fish stocks, sustainable rates of exploitation and the mortality caused by the Community fleet;
- difficulties in determining the “surplus” of resources available for foreign fleets;
- legal deficiencies in the agreements themselves, which are inflexible and are not based on modern environmental principles, such as the precautionary approach;
- inadequate provision (legal and practical) for monitoring, control and enforcement;
- ineffective protection for third country small-scale coastal fisheries and inadequate support for the development of third country fisheries sectors; and
- problems of coherence between third country fisheries policy, on the one hand, and other aspects of the fisheries policy (such as structural policy), environmental policy and development policy, on the other hand<sup>129</sup>.

The Green Paper highlighted the need “to adapt to changing circumstances and new challenges such as the emergence of new players, the legitimate aspirations of many developing States to develop their fishing industry and the requirements of sustainable development and responsible fisheries”<sup>130</sup>.

Following on from the Green Paper, the Commission produced various elements of a comprehensive package of reforms during 2002. As regards third country fisheries agreements, the Commission’s proposals centred on a “Strategy for European Distant-Water Fisheries”, which was to consist of four elements:

- an Action Plan to eradicate IUU fishing;
- an Action Plan for improving the evaluation of stocks that are accessible to Community fishermen outside Community waters, designed to promote regional and other initiatives to obtain better scientific advice on the state of the stocks, the first such initiative to be undertaken in West Africa;
- an integrated framework for the development of fisheries partnerships, particularly with developing coastal States, at the national and regional level (discussed below); and
- a strategy to develop new strategic alliances within regional fisheries organizations, in particular with developing coastal States<sup>131</sup>.

So far only the Action Plan to eradicate IUU fishing and the integrated framework for the development of fisheries partnerships have been adopted.

#### *Integrated Framework for Fisheries Partnership Agreements*

The move from access agreements to “partnership agreements” is designed to contribute better to responsible fishing in the interests of both Parties. In addition to payment for access, FPAs should include a contribution to cover management costs, the scientific assessment of fish stocks, fisheries management, and control and monitoring of fishing activities, as well as the follow-up and evaluation of the agreement. The EU intends its financial contribution to be regarded as an investment for the improvement of responsible and rational fishing.

In its “Integrated Framework” document<sup>132</sup>, the Commission stated that the EU had to contribute to sustainable fisheries inside and outside Community waters and noted that different policies should contribute to this objective while following their own specific objectives:

1. The specific objective of the Common Fisheries Policy is to maintain the European presence in distant fisheries and to protect European fisheries sector interests

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<sup>129</sup> *Green Paper*, at pp 17-18.

<sup>130</sup> *Ibid*, p 17.

<sup>131</sup> European Commission, *Communication on the reform of the Common Fisheries Policy (“Roadmap”)*, COM(2002) 181, pp. 15-16.

<sup>132</sup> *Communication on an Integrated Framework for Fisheries Partnership Agreements with Third Countries*, COM(2002) 637, 23.12.2002.

2. The specific objective of the European Development Policy is to foster developing countries capacities to exploit their marine resources, to increase local value added and to obtain the fairest price for access rights to their EEZ by foreign fleets. Other European policies like research, trade, and environment, also contributed through their own objectives to the overall objective of sustainable fisheries.

The new agreements had to take into account that the management of resources was a sensitive issue in relations with developing countries and the evaluation of the available surplus in the waters of these countries had to:

- respect the principle of ownership of the fishing policy by the Coastal State,
- be based on sound scientific advice as defined in article 62 of UNCLOS,
- be coherent with the Community objective to avoid the overexploitation of the stocks concerned, in the interest of the local populations and for the long term sustainability of their fishery sector, therefore fishing possibilities must be in line with and based on best available scientific data,
- assess the likely environmental impact of fishing, with a view to adopting the necessary remedial measures.

Because control, monitoring and surveillance activities were weak points in the implementation of FAAs, they would be improved through partnership actions in fisheries control with the countries concerned in conformity with the lines of the reform of the CFP. The management of the fleet could cover the eventual inclusion of European LDWF fleet into the fishing fleet of the partner. FPAs could provide the appropriate legal framework and financial instruments reflecting the development objectives of partners, encouraging the transfer of technology, capital and know how by the promotion of joint enterprises between Community interests and those from the coastal states concerned. Moreover, the Community would ensure that public funds are used to support the principles of good governance by Coastal States aiming to implement a sustainable fisheries policy.

The Commission aimed to strengthen developing coastal States' capacities to implement a sustainable fisheries development strategy. This policy was to be applied until the countries concerned acquire the capacity to manage their own fisheries policy effectively. For this reason it was considered necessary to widen the scope of the Community financial contribution in order to invest in sustainable fisheries policy, not just as a payment for access rights to fishing possibilities for the benefit of European fishing enterprises. The Community financial compensation would continue while developing coastal States continued to make some of their surplus available to the Community stakeholders.

For the future, the Community financial contribution would be regarded as an investment for the improvement of responsible and rational fishing and therefore "based" on new considerations. This contribution mainly covers expenses linked to management costs, the scientific assessment of fish stocks, fisheries management, control and monitoring of fishing activities, as well as expenses for the follow up and evaluation of a sustainable fishing policy.

#### *5.2.4 Fisheries Partnership Agreements*

The Commission's Framework was put into practice in 2003, when the EU began negotiating the new type of fisheries partnership agreements. In March 2006, the first of these, with the Solomon Islands, came into force. To date, the EU has signed ten FPAs, four of which are with countries in West Africa (Cape Verde, Gabon, Mauritania, Morocco), and has initialled four more, three of which are with West African countries (Côte d'Ivoire, São Tomé and Príncipe and Guinea Bissau)<sup>133</sup>. The EU is also expected to negotiate an FPA with Guinea (and, outside West Africa, Mauritius) during 2007.

Perhaps most importantly, the fundamental arrangement remains the same: access to fisheries resources in exchange for financial compensation. Furthermore, the structure of the FPAs remains

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<sup>133</sup> Other agreements have been signed with: Comoros, Madagascar, Federated States of Micronesia, Mozambique, Seychelles and the Solomon Islands; an agreement has also been initialled with Kiribati.

similar to the previous fisheries agreements, consisting of an over-arching agreement, supplemented by a protocol and annexes which detail the financial contribution, fishing opportunities and conditions. The main differences between the old fisheries agreements and the FPAs relate to the way the financial contribution is calculated and the change from targeted actions to support for defining and implementing a sectoral fisheries policy. In an effort to move beyond purely commercial agreements, and to contribute more effectively to sustainable fisheries management in the coastal State, the FPAs seek to formally distinguish between the EU financial components (access by EU vessels to the coastal State's fisheries) and financial support for enhancing responsible fishing and the sustainable exploitation of fisheries resources (contribution for fisheries policy). Other changes include scientific cooperation and review of the agreement, increased provision for vessel monitoring systems (VMS) and monitoring, control and surveillance (MCS), a social clause covering employment of seamen, sometimes an exclusivity clause covering the operations of Member States' vessels, and the remit for broader partnership actions in the fisheries sector relating to economic, commercial, scientific and technical cooperation. The FPAs are also subject to a preparatory ex-ante evaluation to determine the overall feasibility and the costs and benefits of each agreement. Implementation is to be overseen through regular meetings by a Joint Committee.

Given the short length of time since any FPA has been in force, it is too early to judge how they will operate in practice. On their face, the agreements appear to respect most of the principles of sustainable fishing and there are identifiable improvements over earlier agreements. On the other hand, the agreements are not substantially different and at this point it is unclear how the fisheries policy aspects will be designed and implemented. As the agreements are now based on a partnership approach, it can be expected that they will develop over time.

### 5.3 STRUCTURAL / FLEET POLICY

It has long been recognized that overcapacity is one of the central problems in the CFP. As far back as 1995, it was estimated that substantial cuts in the EU fishing fleet, in some cases up to 40 per cent, were necessary to achieve a balance between available resources and fishing capacity<sup>134</sup>. Although the four successive fleet reduction programmes (the Multi-annual Guidance Programmes or MAGPs) managed to reduce the overall capacity of the EU fleet between 1986 and 2002, the reduction targets were often very modest and not always attained, considerable variations appeared between Member States and they were undermined by the aid programme that was supporting vessel construction and modernisation. These difficulties, combined with increasing fleet efficiency and declining stocks meant that in many segments the fleet remained excessively large. The shortcomings of the MAGPs and the problems linked to their implementation have been recognized by the Commission on a number of occasions<sup>135</sup>.

The basic problem is that the Community fleet has never been reduced to a size which is appropriate for the level of resources. This has had direct and indirect implications for the EU's relations with developing countries. Directly, EU structural policy has included aid for the establishment of joint ventures and joint enterprises in third country waters: this is considered below. Indirectly, pressure on EU fishing opportunities has created a greater reliance on fishing outside EU waters, and an open policy of seeking to develop fishing opportunities in third country waters<sup>136</sup>. From a sustainability perspective, this is not necessarily undesirable provided fishing effort in those third countries matches available resources and the agreements are operated sustainably – however, this is not what is suggested by the evidence from EU practice (considered in the previous section). These difficulties

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<sup>134</sup> See European Commission, *Report of the Group of Independent Experts to Advise the European Commission on the Fourth Generation of Multi-annual Guidance Programmes* (DG Fisheries, 1996).

<sup>135</sup> See, for example, European Commission, *Mid-term review of MAGP IV*, COM(2000) 272; and *Green Paper*, pp. 10-11.

<sup>136</sup> See, e.g., European Commission, *Communication on Guidelines and Initiatives for the Development of the CFP*, COM(86) 302 and *Council Conclusions of 11 June 1986*, Bull. EC 6-1986, point 2.1.207 both of which refer to the need to find new fishing opportunities with third countries to accommodate the accession of Spain and Portugal.

led to accusations that the EU has exported its problem of excess capacity to international waters and the waters of third States.

### 5.3.1 Financial aid for joint ventures/enterprises

Under the CFP, a joint venture is a temporary (contractual) arrangement between a Member State fishing operator and an undertaking in a third country for the purpose of jointly exploiting fishing resources of that country<sup>137</sup>, while a joint enterprise is an agreement between one or more Member State shipowners and an undertaking in a third country, set up for the purpose of exploiting the fishery resources of the third country, with primary consideration being given to the supply of the EU market, under which EU vessels are permanently transferred out of the EU register to the register of the third State<sup>138</sup>. Aid for joint ventures have formed part of the EU's structural policy since the early part of the CFP, while joint enterprises were introduced in 1990.

Under these schemes, large numbers of EU vessels were able to take advantage of financial aid to support fishing operations in third country waters (which in the case of joint enterprises did contribute to reducing fleet capacity<sup>139</sup>). This occurred both in countries with which the EU had fishery agreements (mainly in West Africa) and in countries with which it did not have agreements (mainly in Latin America and the UK/Falkland Islands) and in countries with which it does. Between 1992 and 2000, EU companies entered into 152 joint ventures/enterprises involving 241 boats, representing some 88,319 GRT and subsidized at a cost of EUR 281 million. Almost half of these arrangements were with enterprises in West African countries (table 1).

**Table 1: Summary of joint ventures and joint enterprises 1992-2000<sup>140</sup>**

	DK		ES		FR		GR		IT		PO		TOTAL	
	JV/ E	FV	JV/ E	FV	JV/ E	FV	JV/ E	FV	JV/ E	FV	JV/ E	FV	JV/E	FV
Cameroon			2	5			1	3			1	1	4	9
Cape Verde											4	4	4	4
Côte d'Ivoire			1	1									1	1
Gabon			2	7							1	2	3	9
Guinea			1	1	3	5	1	1					5	7
Guinea Bissau			1	1							3	5	4	6
Morocco			8	11							3	3	11	14
Mauritania			2	2							6	7	8	9
São Tomé											1	1	1	1
Senegal			10	16			6	7	10	17	1	1	27	41
Sierra Leone							2	3					2	3
Togo			1	4			1	2	1	2			3	8
Total (West Africa)	-	-	28	48	3	5	11	16	11	19	20	24	73	112
Total (all countries)	2	5	82	138	4	8	14	20	16	28	34	42	152	241

The vessels "exported" by the EU under these agreements added substantially to the fishing capacity operating in many of the areas concerned, particularly in some African countries (including those in West Africa, representing, e.g., between 25 and 50% of total GRT in Senegal, Guinea Bissau,

<sup>137</sup> See, eg., Art. 2(1)(b) Regulation 2909/83.

<sup>138</sup> See Art 21 of Regulation 3944/90 [1990] OJ L 380/1.

<sup>139</sup> Joint enterprises, including those under Community fisheries agreements, accounted for approximately one third of all capacity reduction in the 1990s: Court of Auditors, *Special Report No. 18/98 concerning the Community Measures to Encourage the Creation of Joint Enterprises in the Fisheries Sector Accompanied by the Replies of the Commission* [1998] OJ C 393/1, para. 56.

<sup>140</sup> Source: COFREPECHE, *Etude de Bilan des Sociétés Mixtes dans le Contexte des Interventions Structurelles dans le Comaine de la Pêche* (Rapport executive), Study for DG Fisheries (2000).

Cameroon and Guinea)<sup>141</sup>. The impact of this cannot be precisely determined, because of the general lack of information on West African fisheries, but it may be assumed that fishing by these vessels added significantly to the pressure on fish stocks. Further, as the arrangements were private arrangements the activities were largely unregulated (being beyond the scope of most EU regulation, and typically subject to only minimal regulation and monitoring in the coastal State).

### 5.3.2 Structural policy reform

Structural (fleet management and aid) policy was one of the significant areas of the CFP that was comprehensively reviewed when the CFP was reformed in 2002. The new system has as its aim achieving “a stable and enduring balance between . . . fishing capacity and . . . fishing opportunities”<sup>142</sup> and includes a new rules-based fleet management system involving a general entry/exit ratio of 1:1 (such that the introduction of new vessels requires the removal of the same capacity<sup>143</sup>) and strict rules for vessel modernization (aid for which, *inter alia*, is not to lead to an increase in capacity). Importantly, for present purposes, the rules (following temporary derogation periods) provided for the removal of aid for the construction of new vessels and the export of capacity to third countries (including under joint ventures)<sup>144</sup>.

Although it is currently too early to evaluate the effectiveness of the new capacity management system<sup>145</sup>, the new rules on removal of aid for new vessels and export of capacity – have widely been welcomed as an effective step forward for EU subsidy policy<sup>146</sup> – will address the direct problem of promoting joint ventures in West African coastal States on top of fisheries agreements, and (should they be successful in rationalising EU fleet capacity) the indirect problem of creating excess pressure on the distant-water fleet. The rules do not, of course, prevent private investment in third country waters, although this may be limited by the exclusivity clauses in FPAs.

## 5.4 IUU FISHING

As was noted in Section 3, IUU fishing is one of the primary threats to sustainability in West African fisheries, and a major challenge for fisheries and development policies (including the EU’s fisheries policy) in the region. IUU fishing not only undermines fisheries conservation, but also results in substantial economic losses, threatens livelihoods and food security and undermines the economic and social conditions of fishing communities and fishers.

Although the EU addresses aspects of IUU fishing in various specific measures, to date the primary response has been a Community Action Plan for the Eradication of IUU Fishing, adopted by the

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<sup>141</sup> COFREPECHE, *Etude de Bilan des Sociétés Mixtes dans le Contexte des Interventions Structurelles dans le Domaine de la Pêche (Rapport executive)*, Study for DG Fisheries (2000).

<sup>142</sup> Art. 11(1) Council Reg. 2371/2002. Further amendments were agreed in June 2006, when the European Fisheries Fund (EFF) was adopted to replace the Financial Instrument for Fisheries Guidance (FIFG). One of the aims of the EFF, which will apply from 2007-2013, is to “promote a sustainable balance between fish stocks and the Community fishing fleet”: Council Regulation (EC) No 1198/2006 of 27 July 2006 on the European Fisheries Fund, Article 4.

<sup>143</sup> Slightly different rules apply depending on whether new vessels are introduced with public aid; for example, for such vessels over 100 GRT the exit ratio is 1:1.35.

<sup>144</sup> These rules are established by Council Reg. (EC) No 2369/2002 of 20 December 2002 amending Regulation (EC) No 2792/1999 laying down the detailed rules and arrangements regarding Community structural assistance in the fisheries sector, [2002] OJ L 358/49.

<sup>145</sup> Initial signs are somewhat mixed. The Commission’s annual implementation reports are somewhat critical of the implementation of the system. In the latest report, covering 2005, the Commission notes that although there was a net reduction of fleet capacity in 2005, the reductions were relatively small when considered against the high levels of fishing pressure in most Community fisheries, and in particular for demersal species: European Commission, *Annual Report on Member States’ Efforts during 2005 to achieve a Sustainable Balance between Fishing Capacity and Fishing Opportunities*, COM(2006) 872 final, 9.1.2007.

<sup>146</sup> See, e.g., C. Coffey, *Fisheries Subsidies: Will the EU Turn its Back on the 2002 Reforms?* (WWF, 2006), p. 3.



Commission in 2002<sup>147</sup>. The plan, which is quite general (the Commission considering that EU rules in this area were already relatively developed), sets out 15 action areas in which new measures or initiatives are to be identified and developed at the EU, RFMO and international levels and in partnership with developing countries. Several of areas contain proposals relevant to developing countries, and particularly West African countries, although developing countries are only specifically mentioned in the last category which contains one action area: assistance for developing countries to control unlawful fishing<sup>148</sup>. The Action Plan recognizes that the formulation and implementation by developing countries of policies for monitoring and controlling fishing activities at national and/or regional level represent a burden which many of them do not have the resources to undertake, and that the EU should contribute towards their resources (especially, according to the Plan, where its vessels are engaged in fishing activities in those countries under fisheries agreements). The Action Plan does not elaborate how this might be achieved, simply providing that technical and financial assistance with monitoring, control and surveillance (MCS) of fishing activities should be put in place in partnership with the developing countries on terms to be determined on a case by case basis.

Over the past twenty or more years, the EU has provided considerable funding and technical support to MCS activities and projects in West African countries both as a component of fisheries agreements and independently. Considerable support for these programmes also derives from the national aid programmes of some Member States. Joint initiatives are designed, *inter alia*, to improve infrastructure, the use of technology, means of control and the legislative framework and to promote regional monitoring and enforcement schemes. In a recent own-initiative report, the European Parliament acknowledged that there has been some success in implementing such projects, but that they needed to be expanded and better coordinated with national aid agencies<sup>149</sup>. It also noted, however, that the support and cooperation of the developing countries was not always easy to obtain. On other aspects of the Action Plan, the conclusions of the Parliament were similar: that there had been some progress but more to be done<sup>150</sup>.

In its work programme for 2007, the Commission announced that IUU fishing will be a priority and that it intended to produce a communication on IUU fishing and a proposal for a regulation defining a new strategy to combat it. It is noteworthy that the Commission intends to propose legislation, which it did not do in 2002. In advance of these initiatives, the Commission launched a stakeholder consultation identifying nine fields of action, *inter alia*: restricting access for IUU vessels and their catches to EU ports and markets; introducing a more efficient regime of penalties for serious infringements; strengthening work of regional fisheries management organisations against IUU fishing; reinforcing the support to developing countries in their fight against IUU fishing; and increasing the synergies in the field of monitoring, control and surveillance<sup>151</sup>. On developing country cooperation, the Commission's consultation document mainly foresees a reinforcement of current actions, focussing on increasing MCS capacities of coastal States (in particular those with which the EU has a fisheries agreement) and strengthening regional cooperation schemes.

Other fields of action envisage more innovative measures. In particular, the Commission is considering the wider development of port State controls and various market controls, including

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<sup>147</sup> European Commission, *Communication on a Community Action Plan for the Eradication of Illegal, Unreported and Unregulated Fishing*, COM(2002) 180 final, 28.5.2002.

<sup>148</sup> *Ibid.*, Action 15.

<sup>149</sup> European Parliament. *Report on the Implementation of the EU Action Plan against Illegal, Unreported and Unregulated Fishing*. Doc. A6-0015/2007, 29.1.2007.

<sup>150</sup> See also the related Parliament Resolution, which called for EU action to focus on IUU fishing in international waters and in the waters of developing countries and on the Commission and the Member States to redouble their efforts to implement the 15 actions included in the Action Plan, including by assisting developing countries in their ability to monitor fishing activities in their waters and to combat IUU fishing: European Parliament resolution on the implementation of the EU action plan against illegal, unreported and unregulated fishing, 15 February 2007 (not yet published in the Official Journal).

<sup>151</sup> European Commission, *Consultation Paper on the Initiatives Envisaged by the Commission to Improve the Fight of the European Community against Illegal, Unreported and Unregulated Fishing*, December 2006.

“Lacey Act”<sup>152</sup> type measures whereby fish which is caught in violation of foreign laws, or is otherwise determined to be IUU, will be prohibited from entering the EU market. These types of measures also have important implications for developing countries, however. For example, actions taken to reduce the entry of the products of IUU fishing into the EU may have adverse impacts on developing countries, particularly if they lack the capacity to comply with new importing requirements or cannot meet the costs associated with reaching higher standards and complying with documentation requirements. Specifically in relation to West Africa, two further impacts stand out. First, improvement of port State controls has substantial implications because of the level of IUU activity which passes through West African ports and, more importantly, the Spanish off-shore port of Las Palmas. The lack of effective and proper controls on the landing of fish in Las Palmas has been widely documented, and there is growing anecdotal evidence that the port acts as a hub for substantial numbers of fishing and fish transport vessels involved in IUU fishing in West Africa (a “port of convenience”)<sup>153</sup>. Effective port State controls, however, ultimately need to be taken on a regional basis, involving both the EU and the West African States. A second impact concerns the need to develop MCS (and other) measures on a regional basis. Many activities to counter IUU fishing can only be achieved on a regional basis, and yet West African regional fisheries organizations are currently incoherently organized (with several organizations, having overlapping competences), under-resourced and constrained by various institutional and political difficulties<sup>154</sup>. The specific regional and institutional contexts in regions such as West Africa need to be reflected in the IUU policy.

As the Commission’s outline proposals currently stand, developing country issues are not given sufficient priority in the future IUU policy, and the developing country context (including potential impacts) needs to be considered across all actions, rather than being regarded as a standalone issue<sup>155</sup>. To achieve policy coherence in this area, close cooperation will be required between all relevant DGs in the Commission<sup>156</sup>, and in that context it is important that the Commission has re-instated the inter-service consultation group, which was originally set up in 2002 but allowed to lapse.

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<sup>152</sup> The Lacey Act is a US Federal Act under which, *inter alia*, it is unlawful for any person to import, export, transport, sell, receive, acquire, or purchase any fish or wildlife, possessed, transported or sold in violation of any foreign law. It has operated successfully in the US in supporting enforcement in Pacific Island fisheries: for an overview, see P.A. Ortiz, *An Overview of the US Lacey Act Amendments of 1981 and a Proposal for a Model Port State Fisheries Enforcement Act*, Paper prepared for the Ministerially Led Task Force on Illegal, Unreported and Unregulated Fishing on the High Seas, November 2005.

<sup>153</sup> Environmental Justice Foundation. *Las Palmas: a Haven for Illegal, Unreported and Unregulated Fishing*, EJF Briefing, 30 January 2006.

<sup>154</sup> These include: the lack of political will in certain States; the unwillingness of certain surveillance administrations to effectively control the activities of these vessels; political instability in some States; lack of suitable resources in some states to undertake maritime surveillance; unavailability of adequate resources in some states to undertake maritime surveillance; inadequate utilisation of resources within the sub-region; and the high cost of chartering of sub-regional surveillance resources: *Presentation of the Surveillance Operations Coordinating Unit (SOCU)* by A J Jones, Director of SOCU (Dakar, Senegal - May 2004), cited in Greenpeace (2006), *supra*.

<sup>155</sup> This point also emerged strongly in the responses to the Commission’s consultation. For a detailed assessment of developing country issues in the Commission’s proposals, see Federal Ministry for Economic Cooperation and Development (Germany), Department for International Development (UK), *Consultation on the Elaboration of a new Strategy against IUU fishing by the European Community: Response Document resulting from a Stakeholder Consultation Meeting* (DFID, 2007).

<sup>156</sup> This includes at least DG Fisheries (covering aspects related to the CFP), Trade (regulating trade of IUU fish), Development (development cooperation support for regional institutions, MCS support, developing country impacts, etc.) and Sanco (responsible for issuing permits to import fish).

## 6 TRADE AND DEVELOPMENT

### 6.1 RELATIONSHIP BETWEEN EU TRADE POLICY AND FPAS

Fisheries Partnership Agreements (FPAs) are supported by the EU's trade regime, which is structured so as to support the EU distant water fleet (DWF) by a combination of tariff preferences for products produced in ACP countries (including some West African countries), together with strict rules of origin that limit the application of these preferences to products caught by the DWF, as opposed to non-EU DWFs. According to a senior EU tuna industry representative, the simple logic of the 'three pillars' of the interlocking nature of EU tuna policy is that: 'There is a chain of interests, if you break one (rules of origin, the tariff structure, or access) then the *whole* chain is broken'<sup>157</sup>.

The EU protects its fish processing industries by a method known as 'tariff escalation'. This method involves duty free access for the raw materials used by domestic industry, and high tariffs on any products that could compete with the final product. Taking tuna as an example, imports of the raw material (whole fresh or frozen tuna) is duty free, while the standard tariffs on the processed products are high (canned tuna: 24 per cent; fresh chilled fillets: 15 per cent; frozen fillets: 18 per cent). In fact, all of these rates are reduced by 3.5 per cent under the 'standard' generalized system of preferences (GSP), and some exporters (Thailand, the Philippines and Indonesia) are further entitled to a modest quota at 12 per cent<sup>158</sup>. The Cotonou Agreement provides for an apparent exception to this regime by providing for duty free market access to tuna processed in ACP countries<sup>159</sup>; of the West African states, Côte d'Ivoire, Ghana and Senegal are the key beneficiaries in relation to processed tuna exports<sup>160</sup>.

In principle, this appears to be positive for these countries. And indeed, in West Africa, tuna processed in Ghana, Côte d'Ivoire and Senegal is the highest value product in the region<sup>161</sup>. However, the EU's trade regime uses restrictive rules of origin (the rules that determine the origin of a product for purposes of obtaining preferences) which, in practice, lead to a percentage of the benefits of this additional market access being captured by the EU DWF<sup>162</sup>. The Cotonou Agreement sets out the following rules of origin for fish products (including, for example, canned tuna)<sup>163</sup>. The key point here is that the fish is 'originating' based upon the legal and financial status of the fishing vessel (including composition of the crew): To meet this condition, the fish must be 'wholly obtained'. Unless the fish is caught in territorial waters (12 nm), fish must be caught by 'qualifying vessels'. These are vessels meeting the following three requirements:

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<sup>157</sup> Interview by L. Campling with EU tuna industry representative, 2007.

<sup>158</sup> This tariff quota was the price of obtaining a waiver for the WTO-inconsistent Cotonou Agreement at the WTO Doha Ministerial Conference in 2001. For overviews see ACP, *Report of the Meeting of Tuna Manufacturers and Exporters* (Brussels: ACP, 2003) and N Xuto, 'Thailand: Conciliating a Dispute on Tuna Exports to the EC', in P Gallagher et al (eds), *Managing the Challenges of WTO Participation: 45 Case Studies* (Cambridge: CUP, 2005). According to interviews by L Campling with EU and Thai tuna industry representatives in 2006, this tariff quota is reportedly filled within *hours*. This implies that buyers within the EU find it economical to purchase Southeast Asian canned product at a 12 per cent tariff.

<sup>159</sup> Similar duty-free treatment for canned tuna exports is available to those countries that benefit from the EU's Generalised System of Preferences Plus (GSP+) scheme and the Everything But Arms ('EBA') initiative for least developed countries (LDCs). See Council Regulation (EC) No 980/2005 applying a scheme of generalised tariff preferences [2005] OJ L169/48.

<sup>160</sup> Others are Fiji, Kenya, Mauritius, Madagascar, Papua New Guinea, Senegal, the Seychelles and the Solomon Islands

<sup>161</sup> For an overview of the tuna canneries in Ghana and Senegal see IDDRA, *Analysis of the Impact of Opening up the EU Import Market for Canned Tuna on ACP Countries* (IDDRA, 2004)

<sup>162</sup> Fisheries rules of origin have long been a source of contention in EU-ACP trade relations. See for example the critical comments in the early 1980s by the UK Select Committee of the Houses of Commons on Overseas Development on this issue in J Ravenhill, *Collective Clientalism: The Lomé Conventions and North-South Relations* (New York: Columbia University Press, 1985) p. 169.

<sup>163</sup> Rules of origin for the 'Preparatory Period' (2000-7) of ACP-EU trade relations are provided in Annex V of the Cotonou Agreement. For non-technical definitions see L Campling et al, *Pacific Island Countries, the Global Tuna Industry and the International Trade Regime*, (Honiara: Forum Fisheries Agency, 2007), available at [www.ffa.int/node/891#attachments](http://www.ffa.int/node/891#attachments), Chapter 6.

- Vessel must be registered (or recorded) in and flagged by beneficiary or EC country.
- Vessel must be at least 50% owned by EC or beneficiary nationals, or by a company having an EC or beneficiary head office, whose manager(s), chairman and majority of board members are nationals of beneficiary or EC countries and at least 50 per cent of company capital is held within those countries.
- Crew (including Master and officers) must be at least 50% EC, ACP and/or OCT nationals.<sup>164</sup>

Therefore, even if two vessels are fishing next to each other in an ACP country's EEZ, the only vessel that can supply legally 'originating' fish is the one that meets these requirements. In theory, fish caught under these rules would include that caught by a local ACP fleet. However, most ACP countries do not have the capital required to invest in industrial fishing vessels, and even if they did, those vessels would find it highly problematic competing against the EU DWFs for three main reasons.

First, EU DWFs receive significant fisheries subsidies which the ACP countries could not hope to match<sup>165</sup>.

Second, as outlined above, Cotonou rules of origin for fish are very strict and highly complex. It is therefore only in very rare cases (i.e. Ghana) that duty free market access is available to fish products produced from fish caught by an ACP fleet<sup>166</sup>. This means that ACP tuna processors generally have to buy fish from the EU DWF if they wish to gain duty free market access for their processed products. This limits the competitiveness of ACP processing industries, as (by contrast to EU processors) they cannot use cheaper fish sourced elsewhere for their products if they wish to obtain duty free market access. Moreover, because the EU distant water fleet is aware of the tariff preference available to ACP processors, they charge a price premium to ACP-based processors, thereby capturing a percentage of the value of the Cotonou preference<sup>167</sup>.

Third, the ACP fleets would have to meet the EU's stringent sanitary and phytosanitary (SPS) requirements. Specifically, the EU requires freezer and factory vessels to be registered and approved by the local Competent Authority (which is in turn registered and monitored by DG SANCO)<sup>168</sup>. The EU position on SPS is non-negotiable as the health and safety of EU consumers is justifiably paramount. However, the implementation and monitoring costs of these increasingly strict SPS measures for fish and fish product exports are very high, especially for fiscally-squeezed West African states and small and medium-sized enterprises (SMEs) based there. In fact, several analysts have pointed out that SPS measures can be used to protect high-cost producers from low cost imports, and thus act as non-tariff barriers (NTBs)<sup>169</sup>. The EU has recognised the costs to the ACP of meeting these SPS measures and responded by establishing the Strengthening Fishery Products Health Conditions in ACP/OCT Countries (SFP) programme<sup>170</sup>, which has a budget of €56.6 million (the vast majority of which is funded out of the 8<sup>th</sup> EDF). However, the major complaint by ACP officials and industry regarding SFP is that the procedures for accessing funds are very difficult and that applications to the SFP have a very slow turnaround speed because of its very limited number of staff<sup>171</sup>.

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<sup>164</sup> The vessel ownership and crew criteria may be cumulated across multiple signatories to Cotonou.

<sup>165</sup> For an extensive overview of the fisheries subsidies debate (including details of quantitative estimates for developed country fishing fleets) see Campling, above at n 163, Chapter 11.

<sup>166</sup> This includes those EU-owned vessels that are flagged and registered in ACP states.

<sup>167</sup> See also L Block and R Grynberg, 'EU Rules of Origin for ACP Tuna Products' in S Bilal and R Grynberg (eds), *Navigating New Waters: A Reader on ACP-EU Trade Relations* (London: Commonwealth Secretariat, 2007).

<sup>168</sup> Regulation 853/2004 on Specific Hygiene Rules for Food of Animal Origin [2004] OJ L226/22.

<sup>169</sup> See for example, OECD, *Analysis of Non-Tariff Barriers of Concern to Developing Countries*, OECD Trade Policy Working Papers, No 16 (Paris: OECD, 2005).

<sup>170</sup> Details on the SFP programme are available at <http://www.sfp-acp.eu/EN/index.htm>

<sup>171</sup> Interviews by L Campling with African and Pacific fisheries officials and industry, and EC officials, 2006 and 2007.

The end result is that EU tuna processors can obtain their raw materials duty free, while the EU DWF is able to sell to ACP processors at a higher price. In this way, both EU industries (the processors and the fleet) benefit, at the cost of the competitive development of ACP processors. In short, restrictive rules of origin for fish have structurally limited the development of fish processing plants and all important economies of scale in ACP processing facilities.

## 6.2 REFORMS

The situation just described is in the process of being reformed in two fora. First, tariffs on fish products (including tuna) are subject to negotiation with the context of the WTO Doha round of negotiations, and may be reduced if this round reaches a conclusion. Second, and more immediately, the trade regime set out in the Cotonou Agreement is due to expire on 31 December 2007, by which time it is to be replaced by Economic Partnership Agreements (EPAs). Six EPAs are currently under negotiation and intended to be applied by 1 January 2008. Three of these six are relevant to Western Africa:

- CEMAC: Members of the Central African Economic and Monetary Community plus São Tomé
- ECOWAS: Members of the Economic Community of West African States plus Mauritania
- SADC: the Southern African Customs Union (SACU) plus Angola, Mozambique and Tanzania

The impetus for negotiating these agreements was the need for WTO-compatible trade arrangements with the ACP countries (primarily involving reciprocal trade liberalization), but in fact the EPA negotiating process has been used as a springboard for a range of reforms. Two are most relevant here: negotiations on rules of origin, and the delinking of any negotiations on fisheries access agreements.

### 6.2.1 Rules of origin

Article 37(7) of the Cotonou Agreement commits the EU to ‘improving current market access for the ACP countries’, including ‘a review of the rules of origin’. However, reform of Cotonou fisheries rules of origin must take account of the symbiosis between the interests of the EU tuna fleet/processing industry and the ACP-based processors. On the one hand, if reformed rules of origin lead to the commercial collapse of the EU industry, the intra-EU justification for the maintenance of high tuna tariffs declines with it. It is thus probable that the EU is less likely to defend ACP trade preferences in this area because there is no direct benefit to the EU itself. On the other hand, if ACP processors continue to be restricted by fisheries rules of origin and are unable to improve their ability to source fish from a wider range of suppliers, they will remain unable to develop economies of scale so as to compete against low cost producers in Southeast Asia when the preference is eventually eroded. This outcome would thus negatively impact one of the few success stories of industrial upgrading under the Lomé/Cotonou trade preferences.

Therefore, in light of the commercial constraints of existing fisheries rules of origin for West African exporters, it is recommended that the European Parliament support the call by West African EPA groupings for improved fisheries rules of origin<sup>172</sup>. However, as noted above, where there is an important commercial symbiosis between EU industry and ACP-based processors, rules of origin reform requires a careful balancing act between intended developmental outcomes (i.e. improved fisheries development in West Africa) and commercial realities (i.e. the interests of the EU DWF and its role in supplying West African processing plants).

However, this recommendation is made with the firm caveat that the EU’s long-term developmental priority in West Africa should be to facilitate the *local* exploitation and processing of tuna and other fisheries (such as supporting the development of small-scale and semi-industrial capacity). For

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<sup>172</sup> This study cannot go into detail on these positions and their relative merits because they differ between EPA configurations and some are not yet public domain.

example, a recent study by the US International Trade Commission (USITC) found that, while several Africa processed fish exporters depend upon the EU DWF for supply of raw product, at the same time:

... by catching such large amounts of fish in waters just beyond the reach of local fishermen, large foreign-flag harvesters may deplete the availability of fish to such local fishermen, thereby inhibiting the development of the SSA [sub-Saharan African] country's own harvesting capacity.<sup>173</sup>

#### 6.2.2 *Delinking of negotiations on fisheries partnership agreements*

The EPA negotiating process is also remarkable for not taking any account of access by EU distant water fleets to ACP EEZs, including in West Africa. This has an institutional explanation (DG Fish is solely responsible for access agreements) but, in at least two major respects, it is detrimental to West African interests. First, it has effectively removed one of the few concrete negotiation platforms available to those ACP states with rich marine resources. This also contradicts the FAO Code of Conduct for Responsible Fisheries (Article 11.2.7), which states that: "This principle ["States should not condition access to markets to access to resources"] does not preclude the possibility of fishing agreements between States which include provisions referring to ... trade and access to markets." This is a clear example of policy incoherence in the relationship between the EU's external fisheries and trade relations. However, it must be stressed in parallel that, despite the explicit objective of several ACP states to utilise EU fisheries access as a bargaining chip in EPA negotiations and as a mechanism to facilitate regional integration, this should not prevent the application of the precautionary principle in relation to environmentally sustainable harvesting (as applied to fisheries in EU waters), or inhibit West African capacity for domestic fisheries development.

Second, contrary to the EPA process, which is designed to facilitate regional integration<sup>174</sup>, the EU has rejected efforts by ACP countries in East Africa and the Pacific to negotiate fisheries access agreements also on a regional basis<sup>175</sup>. If it is true that regional integration facilitates development, as the EU consistently claims, this rejection of the possibility of regional access agreements would seem to contradict Article 23(d) of the Cotonou Agreement, which states that '[a]ny fishery agreement that may be negotiated between the Community and the ACP States shall pay due consideration to consistency with the development strategies in this area' (Cotonou, Article 23(d)).

#### 6.2.3 *Sanitary and Phytosanitary Measures*

It must be recognised that the EU has acknowledged the problematic and costly nature of the implementation and monitoring of its SPS measures for the ACP; not least through the creation of Strengthening Fishery Products Health Conditions in ACP/OCT Countries (SFP) programme. However, in order to improve the fisheries development possibilities of EU trade preferences and to pro-actively counter accusations that EU SPS measures act as NTBs against low-cost imports, attention needs to be paid on the part of the EU on how to better use funds to facilitate SPS-compliance and related capacity building in West Africa.

### 6.3 CONCLUSIONS

The commercial and developmental importance to West Africa of preferential market access under both the Lomé Conventions and the Cotonou Agreement cannot be under-estimated: it has positively influenced the scale and scope of fisheries development in several countries there and throughout the ACP. However, it is also clear that EU commercial interests similarly benefit from the tariff

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<sup>173</sup> USITC, *Sub-Saharan Africa: Factors Affecting Trade Patterns of Selected Industries* (Washington DC: USITC, 2007), at p81.

<sup>174</sup> For a statement that EPAs are intended to encourage the ACP countries 'to base their integration into the world economy on regional economic integration', see European Commission, *Economic Partnership Agreements – Start of Negotiations* (Brussels: EC, 2002), at p 5.

<sup>175</sup> Interviews by L. Campling with ACP and EU officials, 2005, 2006 and 2007.

escalation associated with processed fish products. Moreover, in terms of policy coherence for development, although Cotonou rules of origin for fish provide a price premium for the EU DWF, they are often a distinct commercial disadvantage to West African exporters. Therefore, while it is too late to redress the policy incoherence between DG Trade and DG Fish in relation to the possibility of facilitating regional fisheries access arrangements with West Africa in the context of proposed EPAs, in the final months of EPA negotiations the European Parliament should take an active role in advocating improved fisheries rules of origin for West African states.

## 7 HUMAN RIGHTS AND GOOD GOVERNANCE

### 7.1 HUMAN RIGHTS CLAUSES

#### 7.1.1 General policy

Since the early 1990s the EU has included a so-called ‘human rights clause’ in all non-sectoral trade and cooperation agreements with third countries (of which there are now over twenty), and including the Cotonou Agreement<sup>176</sup>. These clauses differ between agreements, but they have two essential aspects. First, an ‘essential elements’ clause states that human rights and democratic principles are an essential element of the agreement. Second, a ‘non-execution’ clause provides that in the event that one of the parties fails to comply with its obligations under the agreement, the other party may take ‘appropriate measures’. This is understood to mean the suspension of obligations under the agreement, although increasingly such ‘appropriate measures’ are taking the form of ‘positive measures’ involving human rights activities in the territory of the third country.

The Cotonou Agreement has a particularly elaborate form of the human rights clause, which was somewhat revised in 2005. The Cotonou Agreement differs from the standard model in a number of respects, of which two are particularly relevant<sup>177</sup>. First, the Cotonou Agreement establishes formal mechanisms for political dialogue and consultation prior to the taking of appropriate measures. Second, the Cotonou Agreement contains additional essential elements clauses on ‘good governance’ and compliance with obligations concerning weapons of mass destruction (on which see below)<sup>178</sup>.

The human rights clause under the Cotonou Agreement has been used on numerous occasions, usually to suspend (or reallocate) development aid. On one occasion, the EU suspended its obligation to impose no restrictions on any payments between residents of the Community and Zimbabwe in order to allow for a freezing of funds of certain listed members of the Zimbabwe government<sup>179</sup>. However, other than this example, the EU has not used human rights and democracy clauses as a basis for imposing trade sanctions of any type under the Cotonou Agreement.

#### 7.1.2 Sectoral agreements

The policy of including human rights and democracy clauses in agreements with third countries was set out in a Commission Communication of 23 May 1995<sup>180</sup>. At a General Affairs Council meeting on 29 May 1995, the Council approved ‘a suspension mechanism which should be included in Community agreements with third countries to enable the Community to react immediately in the event of violation of essential aspects of those agreements, particularly human rights.’<sup>181</sup> This mandate is broad, but a lack of coherence in the EU’s external negotiating strategy has given rise to a practice of failing to include human rights clauses in sectoral agreements on textiles, coal and steel, and fisheries. This has been a concern of the European Parliament for some time. In a Resolution on the human rights and democracy clause in European Union agreements on 14 February 2006, the Parliament:

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<sup>176</sup> See, generally, L Bartels, *Human Rights Conditionality in the EU’s International Agreements* (Oxford: OUP, 2005), L Bartels, *Human Rights and Democracy Clauses in the EU’s International Agreements*, European Parliament Study, 2005 and the European Parliament Report on the human rights and democracy clause in European Union agreements (Rapporteur: Vittorio Agnoletto), A6-0004/2006, 23 January 2006.

<sup>177</sup> There is also an Internal Agreement between the Member States on the use of this clause, which is not repeated for other agreements containing human rights clauses: [2000] OJ L317/376.

<sup>178</sup> Art 9(3)(2) together with Art 97; and Art 11b(1) together with 11b(6) Cotonou Agreement.

<sup>179</sup> Council Decision 148/2002 concluding consultations with Zimbabwe [2002] OJ L50/64, inter alia suspending Art 12 of Annex II of the Cotonou Agreement; necessary for the application of Council Regulation 310/2002 [2002] OJ L50/4, itself implementing Common Position 145/2002 [2002] OJ L50/1.

<sup>180</sup> Commission Communication on the inclusion of respect for democratic principles and human rights in agreements between the Community and third countries, COM (95) 216, 23 May 1995; see also Communication on the External Dimension of the EU’s human rights policy: From Rome to Maastricht and Beyond, COM (95) 567, 22 November 1995.

<sup>181</sup> EU Council, 29 May 1995.



Call[ed] for the human rights and democracy clause to be extended to all new agreements between the European Union and third countries, both industrialised and developing, and including sectoral agreements, trade and technical or financial aid, along the lines of what has been done with the ACP States; [and] emphasise[d] that it is no longer prepared to give its assent to new international agreements that do not contain a human rights and democracy clause<sup>182</sup>.

The Parliament reiterated its position in its 2007 Resolution on the Annual Report on Human Rights in the World, when it '[drew] the attention of the Council and the Commission to, in particular, the need to systematically include a human rights clause in all new-generation sector-based agreements such as trade agreements so as to further foster the promotion, protection and realisation of human rights within the aims of those agreements.'<sup>183</sup> These statements are unequivocal: to the extent that it has the power, the Parliament is not prepared to countenance new sectoral agreements which do not contain a human rights clause. The Parliament's power is admittedly limited in respect of fisheries agreements, where it possesses no more than a right of consultation<sup>184</sup>. In practice, therefore, Parliament may not be able to enforce this policy. Nonetheless, it is important to make clear its stance on the matter.

Associated with this issue is the possibility that a fisheries agreement may be suspended under a human rights clause either in the Cotonou Agreement or any human rights clause concluded under a relevant EPA. The standard wording of these clauses provides for appropriate measures 'in accordance with international law'. Under international law, there is no barrier to the suspension of a treaty with a country in response to that country's violation of another international obligation, even when contained in another treaty. This means that even if no human rights clause is included in new fisheries agreements, there remains option for suspension of these agreements in accordance with a human rights clause otherwise applicable between the parties.

However, for the sake of legal security, and for the sake of policy coherence, it is undoubtedly preferable for human rights clauses to be included in all new Fisheries Partnership Agreements, in accordance with the stated wishes of the European Parliament.

## 7.2 GOOD GOVERNANCE CLAUSES

For some years, the EU has also sought to introduce 'good governance' clauses into its trade and cooperation agreements. This practice dates from the 1999 EU-South Africa Trade, Development and Cooperation Agreement, in which the parties affirmed their attachment to the principle of good governance<sup>185</sup>, and in the Cotonou Agreement, concluded the following year, the parties agreed that 'appropriate measures' might be taken in the event that there was a case of serious corruption 'when the Community is a significant partner in terms of financial support to economic and sectoral policies and programmes'<sup>186</sup>. The EPA negotiating directives also make reference to the inclusion of a similar commitment in these agreements<sup>187</sup>.

As a rule, the financial contribution paid under the FPAs is entirely unregulated. For example, Article 2(6) of the Protocol to the FPA with Cape Verde states that '[s]ubject to Article 6, the Cape Verde

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<sup>182</sup> European Parliament resolution on the human rights and democracy clause in European Union agreements [2006] OJ C290E/107, paras 8 and 10 (emphasis added).

<sup>183</sup> European Parliament resolution of 26 April 2007 on the Annual Report on Human Rights in the World 2006 and the EU's policy on the matter (2007/2020(INI)), P6\_TA-PROV(2007)0165, para 128.

<sup>184</sup> Fisheries agreements are concluded under Article 37 EC, which provides for qualified majority voting. The Parliament was denied the right of assent under Art 300 (which provides for assent in cases of agreements with 'significant budgetary implications') in Case C-189/97, *Parliament v Council (EC/Mauritania Fisheries Agreement)* [1999] ECR I-4741.

<sup>185</sup> Art 2 EU-SA TDCA.

<sup>186</sup> Art 9(3) and 97 of the Cotonou Agreement.

<sup>187</sup> EU Council, Directives for the Negotiations of Economic Partnership Agreements with ACP Countries and Regions, Doc 9930/02, Annex 1.

authorities shall have full discretion regarding the use to which this financial contribution is put'.<sup>188</sup> Article 6 is entitled '[s]uspension and review of the payment of the financial contribution on grounds of *force majeure*'. While considerations of national sovereignty should be taken into account, there are also a number of reasons why a good governance clause should be included in such agreements, as providing another reason for terminating payments.

The first rationale is external: the EU can use the threat of suspending financial contributions under a fisheries agreement to achieve 'good governance' in the other country for its own sake. The second is more subtle: it is to give the EU a tool for avoiding being complicit in any corruption in the other country, and this is a tool that the EU must have in order to comply with its own development objectives. This second rationale also underpins the European Parliament's 2005 Resolution on the Impact of Lending by the EC in Developing Countries, in which the Parliament:

Ask[ed] the EIB to take effective measures against corruption and money laundering and, as part of a comprehensive anti-corruption policy, to commit itself to supporting contracts resulting from an open and transparent negotiating process that oblige the EIB's clients in developing countries to demonstrate that they have internal revision systems capable of identifying bribery and corruption; further asks the EIB to investigate and to pass on to the relevant authorities all accusations of corruption and to impose appropriate sanctions on those found guilty<sup>189</sup>.

There is however also a third rationale for a good governance clause in the EC's agreements, including its fisheries agreements. This is to bring coherence to the EU's human rights and good governance policies in other areas, and most particularly the Cotonou Agreement. It would undermine this policy for corruption to be allowed under a fisheries agreement, while the same practice is sanctioned under another instrument.

For these reasons, it is recommended that consideration should be given to the inclusion of new fisheries agreements of a clause, similar to that in the Cotonou Agreement, making good governance an essential element of the EU's fisheries agreements. The EU has the opportunity, and could be taken also as having the responsibility, to take steps to ensure that funds paid under fisheries agreements do not contribute to corruption in the third country. To allow this would be to undermine the EU's development policies, thereby impairing the EU's obligation to strive for coherence in these policies.

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<sup>188</sup> Fisheries partnership agreement between the European Community and the Republic of Cape Verde [2006] OJ L414/3.

<sup>189</sup> European Parliament Resolution on the Impact of Lending by the EC in Developing Countries [2005] OJ C157E/477.

## 8 ANALYSIS AND RECOMMENDATIONS

### 8.1 INTRODUCTION

The EU is legally required under Article 3 EU to achieve policy coherence in its external activities, under Article 6 EC to integrate environmental protection requirements in its policies, with a view to promoting sustainable development, and under Article 178 EC to ‘take account’ of development cooperation objectives in the implementation of any policies likely to affect developing countries. In recent years, the EU Council, Commission and European Parliament have sought to apply these requirements to the EU’s Common Fisheries Policy (CFP). This was a key focus of the 2002 CFP reform, and is also a feature of the new generation of Fisheries Partnership Agreements (FPAs) concluded since 2003.

However, it is too early to know how these agreements will be implemented in practice and whether they will be more effective in promoting responsible fishing and sustainable development. Moreover, there are still aspects of these agreements that remain inconsistent with other aspects of the EU’s external policies. First, while the FPAs provide a significantly higher rate of return for host States than arrangements with most other distant water fleets, the value received by coastal states does not compare to that captured by the EU, including the benefits of landing and processing in the EU. Second, the continued presence of the EU fleet in West African EEZs hinders efforts to develop local fleets, both because there is not economic and physical space for both, and because the EU fleet is supported by a variety of direct and indirect subsidies. The presence of the EU fleet in West African waters is also inconsistent with environmental policy and sustainable development policy (including the conservation of natural resources), as it depletes fish stocks, compromises biodiversity, and impairs ecosystems.

The following summarises the main findings of this study on areas in which incoherence persists, and makes recommendations to bring greater consistency to the different strands of the EU’s fisheries policies as they affect sustainable development in West Africa. The main areas of incoherence are between EU fisheries policy and environmental protection policy (section B), development cooperation policy (section C), and human rights and good governance policy (section D).

### 8.2 INCOHERENCE BETWEEN FISHERIES POLICY AND ENVIRONMENTAL PROTECTION REQUIREMENTS

#### 8.2.1 *Overfishing*

Despite some factual uncertainties, it appears that a large number of West African fish stocks are over-exploited, and reductions in fishing are required<sup>190</sup>. Evidence of depletion has in some cases led to such reductions under FPAs, but there are doubts whether these are sufficient<sup>191</sup>. Both international and European law require coastal States and fishing States to conserve and manage fish stocks so that they can be harvested sustainably for generations to come. This requires the application of both the precautionary approach and the ecosystem approach.<sup>192</sup> In order to ensure that FPAs do not contribute to over-fishing and depletion of the stocks, rigorous scientific assessments of fish stocks and effective control over fishing is necessary.

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<sup>190</sup> FAO, *The State of the World’s Fisheries and Aquaculture* (SOFIA), Rome 2006; CECAF, Report of the fourth session of the Scientific Sub-Committee, Accra, Ghana, 24-26 October 2005, FAO Fisheries Report no. 807.

<sup>191</sup> The Mauritanian FPA still allows access for EU vessels to octopus, even though recent assessments indicate there is 31% excess capacity in the fishery (CFFA, 2006).

<sup>192</sup> For the precautionary approach, see the UNFSA, FAO Code of Conduct, EC Treaty, Proposal for a Marine Strategy Directive, Council of the European Union, Doc. 16976/06, 20 December 2006.

## **Recommendation 1**

***In principle, sustainable fisheries management in West Africa countries should be based upon both the precautionary approach, and the ecosystem approach to fisheries, as is required in European waters<sup>193</sup>.***

### **8.2.2 Surplus**

Both international law and EU law require that only fish surplus to coastal State capacity be caught<sup>194</sup>. In practice, this demands a reliable determination of the status of the stocks, a determination of maximum sustainable yield and a total allowable catch (TAC), as well as a determination of the amount of fish that could be caught by local fishers to be calculated prior to the conclusion of any FPA. In 2001, the Development Committee commented that despite the requirements in the Code of Conduct to apply the precautionary principle and to take into account the interests of artisanal and small-scale fishers, too often the EU did not have an adequate analysis of the state of fish stocks in the waters of the countries in whose waters the EU fleet wished to fish. The Commission negotiated access based essentially on the demands of EU shipowners, instead of taking account of the impacts on stocks and local fishing communities<sup>195</sup>. But even when the Commission undertakes *ex ante* evaluations of the agreements, the results are not usually made public. In addition, although the amount of fishing authorised is supposed to be based on scientific assessments, because EU payments are still based on fishing effort, host governments might agree to excessive fishing in order to increase revenues even in the face of scientific warnings that fishing should decrease.

## **Recommendation 2**

***In accordance with the legal requirements on fishing only the surplus fish<sup>196</sup>, before any agreement is concluded or extended, there must be reliable determinations of the status of the stocks, the maximum sustainable yield, the total allowable catch<sup>197</sup>, and the amount of fish that could be caught by local fishers No fishing should take place until these determinations are made and the EU should not take any fish if there is no surplus.***

### **8.2.3 Bycatch**

As recognized by international fisheries instruments and a recent Commission Communication<sup>198</sup>, the taking of non-targeted fish (bycatch) is a significant problem. In shrimp fishing, bycatch can amount to as much as 90 per cent of the catch. Unwanted species are thrown back dead into the water, a waste of potentially valuable food resources. International fisheries instruments contain requirements to minimise bycatch, yet although some FPAs contain references to bycatch, they do not provide for specific control mechanisms<sup>199</sup>.

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<sup>193</sup> For the application of the ecosystem approach, see latest UNGA resolution on sustainable fisheries in paras 76–80 and United Nations Report of the Secretary-General on oceans and the law of the sea, A/61/63, Chapter X.

<sup>194</sup> Commission Communication on an Integrated Framework for Fisheries Partnership Agreements with Third Countries, COM(2002) 637 final; Council Conclusions, on a Communication from the Commission on an integrated framework for fisheries partnership agreements with third countries”, document 11485/1/04 REV1 PECHE 254, 15 July 2004.

<sup>195</sup> European Parliament, Committee on Development and Cooperation, “Working Document on the developing countries: Fisheries and Poverty Reduction”, (COM(00)0724 – C5-0071/2001 – 2001/2032(COS)), hereinafter *Fisheries and poverty reduction*.

<sup>196</sup> Commission Communication on an Integrated Framework, op.cit.

<sup>197</sup> See Commission Communication on Implementing sustainability in EU fisheries through maximum sustainable yield, COM(2006) 360 final, 4 July 2006.

<sup>198</sup> The Commission has recently issued a communication on bycatch and discards and initiated a pilot project to ban discards COM(2007) 136 final, “A policy to reduce unwanted by-catches and eliminate discards in European fisheries”, SEC(2007) 380, SEC(2007) 381.

<sup>199</sup> Agreements covering tuna fishing refer to ICCAT regulations.

### ***Recommendation 3***

***Action on bycatch and discards should be implemented in West African waters under existing FPAs, and future FPAs must contain provisions on bycatch***

#### ***8.2.4 Restrictions on fishing effort***

FPAs do not always include effective limitations on fishing effort, or on catches. Most FPAs provide for a limit on the number of vessels or for a maximum gross tonnage (GRT). However, the amount of fish caught depends on neither criterion independently<sup>200</sup>. The amount of fish taken depends on a large number of factors, including the size of the ship, the power of its motor and equipment, the type of equipment, the skill of the officers and crew, the type of processing onboard, whether it is bunkered offshore or has to go into port and whether it can tranship at sea instead of in port<sup>201</sup>. This contrasts with the most prevalent and effective method of controlling fishing: limiting catches through the use of total allowable catch (TAC) and quotas. The problem is that this method requires first of all a scientifically based stock assessment, a determination of a biologically and ecologically safe level of fishing, and then effective monitoring and reporting of catches, which are all difficult for developing countries. Furthermore, fishers frequently misreport catches and most developing countries do not have sufficient capacity for monitoring, control and surveillance (MCS)<sup>202</sup>. Neither method is foolproof, but both depend on effective monitoring, surveillance and enforcement. African States have not had the capacity to monitor and enforce effectively and the EC has been equally ineffective, as acknowledged by the European Commission<sup>203</sup>.

### ***Recommendation 4***

***Strong efforts should be made to improve MCS in African Coastal States as soon as possible.***

#### ***8.2.5 Scientific Research and Institutions***

Coastal states need more support for stock assessment as they often lack the financial and human resources to carry out such work. Although the FPAs provide for scientific advice to guide decision-making, it is not always clear how this will be done<sup>204</sup> and there are no provisions for training scientists and no directed funding for scientific institutions. In these cases, technical and expert advice is needed in addition to funding to carry out the data collection and analysis. Moreover, development-type support may be more effective than simple funding under FPAs and may provide a better framework for providing financial support, expert advice and capacity building.

This lack of scientific capacity in developing countries has been a problem for some time and the EU has had a policy of addressing the issue<sup>205</sup>. But in addition to enhancing national fisheries research capacity, it would be desirable to strengthen the main regional body for fisheries advice (CECAF), which lacks adequate funding and reliable data<sup>206</sup>. Several development-oriented projects are underway in the West African region to survey the fishery resources, including an EU-funded project on Improving Scientific and Technical Advice for Fisheries Management (ISTAM), but these suffer from a lack of coordination, as well as the constraints in locally available human resources.

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<sup>200</sup> Ten large vessels can catch more than ten small vessels, but even a small vessel may catch a substantial amount of fish if it has powerful motors, advanced technology and is serviced offshore.

<sup>201</sup> Commission Communication: Implementing sustainability in EU fisheries through maximum sustainable yield, COM(2006) 360 final and “Commission Communication on improving fishing capacity and effort indicators under the common fisheries policy”, COM(2007) 39 final.

<sup>202</sup> For example, the FAO country profile for Cape Verde estimates that in 2002, 90 per cent of foreign vessels were registered in the EU and only 10 per cent of all foreign vessels declared their catches, and that that one of the major problems associated with foreign vessel operations is Cape Verde’s lack of MCS capacity: Profile de La Pêche par Pays, La République du Cap Vert, janvier 2004, [www.fao.org/fi/fcp/fr/CPV/profile.htm](http://www.fao.org/fi/fcp/fr/CPV/profile.htm) (original in French).

<sup>203</sup> COM(2007) 167 and SEC(2007) 425 and press release of 10 April 2007, “Commission: improvements still needed in fisheries control”.

<sup>204</sup> Article 3 of the recent Protocol to the Mauritanian FPA provides for a Joint Scientific Committee.

<sup>205</sup> Council Conclusions on an integrated framework, op. cit.

<sup>206</sup> CECAF Report, op. cit. pp.5-6.

### **Recommendation 5**

***The EU should take the initiative in helping West African countries to coordinate scientific research projects in the area, and should require its own vessels to provide accurate data to research programmes.***

### **Recommendation 6**

***Together with other donors, the EU should improve CECAF's research capacity, including through a significant amount of funding.***

#### **8.2.6 Sustainable Fisheries Management by the Coastal State**

The FPAs provide dedicated funding to support the development of national fisheries policies in host countries to serve as the basis for sustainable fisheries management. While FPAs have integrated a number of measures to promote sustainable management such as an exclusivity clause<sup>207</sup>, biological recovery periods, by-catch limits and restriction of fishing zones, these elements are not included in all the agreements. Furthermore, the types of conservation measures that would be applied in EU waters through the CFP are not applied within developing country EEZs, including measures relating to bycatch. More generally, an extensive and integrated programme of management measures is required for modern, effective and sustainable fisheries management. In particular, sustainable fisheries management requires the application of the precautionary approach and the ecosystem approach. Since the development and implementation of sustainable fisheries management practices require considerable technical expertise, technical assistance and capacity-building may be necessary for the developing country to use the money provided by the FPAs effectively.

For some States, it may seem easier simply to take the money provided by the FPAs than to improve management and fisheries policy. Alternatively they might not be aware that the benefits of development would be greater than the cash received in financial contributions. They may lack the expertise to design a fisheries policy and to implement sustainable management strategies and measures. In devising these, they could benefit from greater information and from examining the ex-ante and ex-post reports prepared for the Commission.

### **Recommendation 7**

***Increased development and capacity-building assistance should be provided to West African countries for developing a national fisheries policy, research capacity in fisheries science, fisheries management capacity, human resources training, MCS and enforcement capacity, as well as general fisheries governance, through coordination of EU development programmes, national development programmes of EU Member States and programmes of international organisations and NGOs. These should be coordinated or integrated with any FPAs to ensure that funds are effectively utilised for fisheries policy and development purposes. FPAs should always be complemented by development assistance and capacity-building.***

#### **8.2.7 Illegal, unreported and unregulated (IUU) fishing**

According to a 2005 MRAG report, illegal, unreported and unregulated (IUU) fishing took nearly 20 per cent of the catch in sub-Saharan African waters and was the cause of direct and indirect economic losses, adverse socio-economic impacts and environmental damage. This is not solely a practice of EU vessels, but these are involved in zone violations and poaching from protected areas, as well as misreporting<sup>208</sup>. The Commission has pledged to take strong action on IUU fishing internationally<sup>209</sup>. The issue is also being addressed by other actors, such as the Ministerial High Seas Task Force and

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<sup>207</sup> EU vessels may not conclude private fishing agreements with the host country.

<sup>208</sup> MRAG, *Review of Impacts of Illegal Unreported and Unregulated Fishing in Developing Countries, Synthesis Report*, July 2005.

<sup>209</sup> "Informal Fisheries Council: Statement by Commissioner Joe Borg, Agriculture and Fisheries Council, Luxembourg, 17 April 2007", press release on EC website, accompanied by text of statement.

the UK government<sup>210</sup>. However, IUU fishing could also be addressed under the FPAs themselves, as an issue requiring cooperative measures<sup>211</sup>. Effective measures to combat IUU fishing would require technical and enforcement assistance from flag States. Programmes to address compliance generally and IUU fishing in particular would be more effective in a regional context. The FAO recently agreed to elaborate a new agreement for port State measures to combat IUU fishing<sup>212</sup>. Multilateral lending institutions should also ensure that capital is not being used to finance illegal activity in the fishing sector.

#### **Recommendation 8**

***The EU should continue to support national and regional measures to combat IUU fishing off the coast of West Africa, including the elaboration of the new FAO instrument.***

### **8.3 INCOHERENCE BETWEEN FISHERIES POLICY AND DEVELOPMENT POLICY**

#### **8.3.1 Value of FPAs**

As the European Parliament has noted, there is an imbalance in the bargaining power between the EU and the West African countries,<sup>213</sup> especially where the financial contribution comprises a large percentage of the coastal State's budget (for example 35 per cent for Guinea-Bissau)<sup>214</sup>. This has led West African governments to grant access even when the foreign fishing fleets do not contribute to poverty reduction or sustainable development.<sup>215</sup>

#### **Recommendation 9**

***The EU must take account of the interests and development needs of West African countries when negotiating and implement FPAs***

#### **8.3.2 Development of local fleets**

According to the Commission's communication and the Council's Conclusions on the Integrated Framework<sup>216</sup>, FPAs are intended to support sustainable and responsible fisheries. The first point in the Council Conclusions on an Integrated Framework of July 2004 states that in contributing to the rational and sustainable exploitation of the surplus of coastal States' marine resources, due account will be taken of the coastal States' priorities in favour of its national private sector. Yet, the FPAs lead to situations that can be highly detrimental to national fishing fleets and can contribute to the overfishing of stocks in which the local people are interested. In this way, the activities of the EU fleet are incoherent with both EU fisheries policy and EU policy for sustainable development.

The development of local fleets in West African countries could assist in their goal of sustainable development. Some West African coastal States have included the development of small-scale fleets in their national development policies and in proposals for national fisheries policies. In their support for national fisheries policies, the FPAs could potentially assist in the development of a national fleet. However, these national objectives could be incompatible with DWF activities carried out under an FPA. At a minimum, the EU fleet and local fleets could be in direct competition with local and

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<sup>210</sup> This includes the High Seas Task Force and the UK government. See *Closing the Net March 2006*, at [www.high-seas.org](http://www.high-seas.org).

<sup>211</sup> For example, the protocol to the new FPA with Mauritania includes Chapter X on the "fight against illegal fishing".

<sup>212</sup> FAO press release "Countries agree to strengthen controls in ports to combat illegal fishing: first steps taken toward binding international agreement, 12 March 2007.

<sup>213</sup> OECD, *Fishing for Coherence*, at p 16. Recently, certain NGOs, such as WWF and EDCPM have published advice for developing countries in negotiating fisheries agreements and have offered assistance in negotiations.

<sup>214</sup> *Fisheries and Poverty Reduction*, op. cit.

<sup>215</sup> According to press reports, last year Senegal took a different view and refused to sign a disadvantageous agreement. Report in Agritrade, <http://agritrade.cta.int>, quoting from: Walf Fadji, 1 July 2006; Le Soleil, 11 July 2006; Le Soleil, 28 June 2006.

<sup>216</sup> Commission Communication and Council Conclusions on an integrated framework, both op. cit.

artisanal fleets for coastal demersals, crustaceans and cephalopods, and often inside the zone usually reserved for national fleets. Furthermore, the FPA principle of “non-discrimination between the fleets active in a fishing zone” theoretically gives the EU fleet and the local fleet equal access to resources. While such provisions might appear to be fair, EU vessels enjoy a number of competitive advantages over local fleets, of which direct subsidies are a major part. The US has recently presented a proposal at the WTO<sup>217</sup> which would ban subsidies that lead to over-capacity and over-fishing. However, the proposal does not cover government-to-government payments to obtain access to fisheries in another State’s EEZ<sup>218</sup>, provided that the payments do not subsidise vessel owners. In addition, so long as there is no domestic fleet in the West Africa country concerned, EU vessels are indirectly subsidised by rules of origin, inasmuch as local processors must purchase their fish from EU vessels (and reportedly pay a premium to do so) if they wish to benefit from duty free market access to the EU.

#### **Recommendation 10**

***(a) Non-discrimination:*** Priority access should be reserved for the national fleet of the coastal State, especially small scale and artisanal fishers. In accordance with Article 61 of the LOSC, other developing States in the region could also be given priority.

***(b) Subsidies:*** EU shipowners should not be subsidised and should pay the market price for licences in West African EEZs. Moreover, subsidies that support over-capacity should be terminated and greater incentives provided to reduce over-capacity.

***(c) Rules of origin:*** The rules of origin for trade should be reviewed and amended to end privileges for the EU fleets that impede West African processors efforts to increase production and buy and sell at a competitive price.

***(d) TBT and SPS measures:*** Technical and financial assistance must be granted to build capacity to help West African countries meet EU requirements concerning technical barriers to trade and, particularly, sanitary and phytosanitary standards.

#### **8.3.3 Employment of local crew**

Most agreements include the requirement to employ a certain number of local crew, which provides employment to nationals of the coastal state. Some recent agreements have changed the requirement from national crew to ACP crew, giving more flexibility to EU boats but potentially fewer benefits for the coastal state. Most proposals on the EU-side (ie the Commission and industry) for reform of EU fisheries rules of origin both for proposed EPAs and for the GSP schemes foresee the deletion of the current crewing requirements<sup>219</sup>. The commercial rationale is to reduce operating costs for the EU DWF. The extent to which this reform will impact on future FPA negotiations is unknown.

#### **8.3.4 Effect on small-scale fishers**

The FPAs are not coherent with development policy because they do not provide for the development and protection of small-scale fisheries, and in some cases directly conflict with these fisheries. International agreements, policy declarations and the FAO Code of Conduct require the EU to protect artisanal and small-scale fisheries. Problems arise where the EU fleet targets the same species as the artisanal fleet. This may lead to conflicts between vessels and gears, and competition for the same stocks can affect food security. Fishing effort licensed under FPAs and other bilateral agreements almost inevitably results in some adverse impacts on other fishing in the same waters, simply because in most fisheries any increase in effort reduces stock abundance and therefore catch rates. When the level of effort deployed by foreign vessels is large in comparison to the domestic fleet, the effects on catch rates can significantly reduce the viability of domestic vessels. The effects are greatest on small-scale and artisanal vessels that cannot compete with larger industrial vessels.

In recent years there has been considerable concern about the fate of small-scale and artisanal fisheries when competing with large, highly efficient industrial fleets. The issue of small-scale fishing

<sup>217</sup> United States, Fisheries Subsidies: Proposed New Disciplines, WTO Doc TN/RL/GEN/145, 22 March 2007.

<sup>218</sup> See [www.ictsd.org/biores/07-05-11/story3.htm](http://www.ictsd.org/biores/07-05-11/story3.htm).

<sup>219</sup> Multiple interviews by L. Campling with EU industry and EC officials, 2006 and 2007.



is now a permanent fixture on the agenda of the FAO Committee on Fisheries (COFI). In 2005, after a series of consultations, the FAO published guidelines on “Increasing the contribution of small-scale fisheries to poverty alleviation and food security”. The subject was discussed at the 2007 COFI and States called for an international conference on the issue<sup>220</sup>. In 2001, the Development Committee concluded:

Thus, the signature of fisheries agreements sometimes results in competition between European fishing fleets and local small-scale fishing in the developing countries for depleting resources, thereby threatening the survival of coastal communities in the developing countries and the resources on which they depend (Senegal, Mauritania). Because some of these fleets use destructive fishing methods or too great a fishing effort for the resources available, they soon come into conflict with the small-scale fishing fleets in developing countries and are a threat to the conservation of resources<sup>221</sup>.

Some FPAs expressly allow for fishing possibilities for inshore demersal fishing and cephalopods<sup>222</sup>, while in other cases EU fleets ignore zoning for fishing grounds, and venture into the territorial sea, which is usually reserved for local fishers. This is in part because of deficiencies in coastal surveillance and enforcement in many developing countries.

### ***Recommendation 11***

***The EU should cooperate with host countries to find ways to minimise conflicts between the EU fleet and local small-scale and artisanal vessels. The EU should control its own vessels to ensure that they do not violate regulations and do not come into conflict with small-scale local fleets.***

#### ***8.3.5 The local processing industry***

For coastal states, the added value generated from the processing of fresh fish could potentially be greater than direct financial compensation payments from the EU, and could contribute substantially to sustainable development, employment, and the alleviation of poverty and hunger. The benefits accruing to individual countries from fisheries vary considerably. At present, in most cases revenue from land-based activities, port fees, payment for repairs, and profit from processing goes to the EU, because the fish caught by the EU fleet is landed and processed in the EU. Cote d’Ivoire and Senegal have been among the exceptions in adding value through their processing industry. The current Protocol with Cote d’Ivoire provides for landings in the port of Abijan<sup>223</sup>. In comparison, the agreement with Mauritania (one of the largest-value FPAs) only encourages landings by EU fishing vessels through a reduction in fees.<sup>224</sup> In general, it has been estimated that approximately 10 per cent of the employment and value-added from fisheries agreements goes to the host country, with 90 per cent received by the distant water fishing fleet and EU processors<sup>225</sup>.

Some agreements require the participating vessels to land a proportion of their catch or by-catch in local ports, which should provide employment and revenue at the landing site. On the other hand, substantial landings of low value fish could deflate the price obtained at market and be detrimental to small-scale or artisanal fishers. However, there could be advantages for low-income households who could purchase fish and fish products at cheaper prices, thereby improving food security. Processors, which are mainly female, would also benefit, as they would have a greater volume of raw material to process, thereby increasing their profits. Landings of high value fish that are processed locally could

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<sup>220</sup> FAO press release, “Countries agree to strengthen controls in ports to combat illegal fishing”, 12 March 2007.

<sup>221</sup> Fisheries and poverty reduction, op. cit.

<sup>222</sup> Such as the Senegal-EU agreement from 1990 to 2006, although the possibilities were decreased successively in 1994, 1997 and 2001. There are suggestions that one of the difficulties in negotiating a new agreement was the reluctance of Senegal to allow further foreign fishing possibilities of these coastal demersal resources.

<sup>223</sup> Council Regulation (EC) No 953/2005. Despite this, the Committee on Development commented that the financial compensation was not addressing development purposes, Doc. A6-0114/2005, p.18

<sup>224</sup> Council Regulation (EC) No 1801/2006, 30 November 2006, Protocol, Chapter VII.

<sup>225</sup> Mwikya, S.M., “Fisheries Access Agreements: trade and development issues”. ICTSD, 2006

boost the export values for host countries and provide employment in local processing factories and trading businesses.

#### **Recommendation 12**

*(a) Provisions for the improvement of local processing facilities should be considered within the multiannual plans negotiated by the Joint Committees. Where appropriate, a proportion of the compensation package should be ring fenced to assist in the development of local processing and trading facilities.*

*(b) Joint venture operations established to provide processing, marketing and trading services should be encouraged and should be monitored by both the coastal state and the EU.*

### **8.4 INCOHERENCE BETWEEN FISHERIES POLICY AND HUMAN RIGHTS AND GOOD GOVERNANCE POLICY**

#### **8.4.1 Human rights**

The FAO has emphasised the importance of human rights for the achievement of sustainable fisheries, sustainable development, and alleviation of poverty and food security. The FAO guidelines on small-scale fisheries point to the relevance of various human rights instruments in considering policies and law on the right to food, women's rights, the right to earn a living, the right to education, to non-discrimination etc, as leading to pro-poor outcomes<sup>226</sup>. This is relevant to the question of whether the fisheries policy of concluding FPAs could violate certain human rights of the people in West Africa, including the right to food and to earn a living.

Food security in particular is a complex issue. Much depends on the species being caught, prices, consumer preferences, the amount exported as opposed to locally landed, and the fish supplied by the domestic fleet (if any). Food security can be threatened if the EU fleet fully exploits and exports local species; on the other hand, this must be balanced against the negative effects on the income of small-scale fishers by the oversupply of low value species.

#### **Recommendation 13**

*Food security and sustainable livelihoods must be a primary concern of the EU in all aspects of its fisheries policy relations with West Africa, including its fisheries trade policies.*

#### **8.4.2 Human rights clause**

Since the early 1990s the EU has included a so-called 'human rights clause' in all non-sectoral trade and cooperation agreements with third countries (of which there are now over twenty), and including the Cotonou Agreement. These clauses permit the suspension of obligations under the agreement, as well as 'positive measures' in the territory of the third country. In contrast, the EU has failed to include human rights clauses in sectoral agreements on textiles, coal and steel, and fisheries. In a 2006 Resolution, the Parliament specifically '[c]all[ed] for the human rights and democracy clause to be extended to all new agreements between the European Union and third countries, both industrialised and developing, and *including sectoral agreements*'. It also 'emphasise[d] that it is no longer prepared to give its assent to new international agreements that do not contain a human rights and democracy clause'. The Parliament reiterated its position in its 2007 Resolution on the Annual Report on Human Rights in the World.

#### **Recommendation 14**

*All new fisheries agreements should include a human rights clause consistent with EU policy, and along the lines of human rights clauses included in the EU's non-sectoral trade agreements.*

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<sup>226</sup> FAO, *Increasing the contribution of small-scale fisheries to poverty alleviation and food security*, Technical Guidelines for Responsible Fisheries No. 10, 2005. In 2004, the FAO Council adopted Voluntary Guidelines to support the progressive realisation of the right to adequate food in the context of national food security.

#### 8.4.3 Good governance clause

The 2000 Cotonou Agreement includes a ‘good governance’ clause providing for the suspension of obligations under the agreement in cases of serious corruption when the Community is a significant partner in terms of financial support to economic and sectoral policies and programmes. The EPA negotiating directives also provide for the inclusion of a similar clause in these agreements. The purpose of such clauses is twofold: first, it is to ensure that EU funds are allocated according to their intended purpose; and second, it is to ensure that EU funds are not used to subvert development in the recipient countries, which could contradict EU development objectives. It is suggested that consideration should be given to introducing such clauses in all agreements with developing countries that provide for financial payments, including fisheries agreements. This is not because EU funds are provided for any specific purpose (indeed, FPAs frequently specify that the partner country is unregulated in this respect, at least for some of the funds). Rather, it is to ensure coherence with the EU’s development objectives, which include anti-corruption measures.

#### **Recommendation 15**

***Consideration should be given to the inclusion in all new FPAs of a good governance clause providing for the suspension of the agreement in cases of serious corruption concerning payments made under these agreements.***

### 8.5 LONGER TERM ISSUES

#### 8.5.1 Regional cooperation and integration

FPAs are still being negotiated on a single country basis. In 2001, the Committee on Development noted that as the fish stocks move across national EEZ boundaries, from the point of view of conservation and management of the stocks, the single country approach results in over-exploitation as the EC tries to maximize the quantities of fish taken in each country. This was a particular problem in West Africa, as CECAF does not have adequate financial and scientific resources to establish the basis for the sustainable management of the stocks.<sup>227</sup> For similar reasons, the European Parliament, NGOs and even the European Commission itself consider that fisheries agreements should be negotiated on a regional basis. In a December 2005 Communication on Policy Coherence, the Commission proposed that: “Should the Council of Ministers decide so, the current bilateral approach of FPA may be complemented, where appropriate, by a regional approach.”<sup>228</sup> It may be relevant to note that the EU is committed to regional integration in West Africa and is negotiating EPAs on a regional basis.

#### **Recommendation 16**

***The EU should consider negotiating a regional partnership agreement. This could contain common provisions in the main text, supplemented by national protocols addressing the specific development requirements of each State.***

Another option could be to gradually phase down FPAs and to manage the West African fisheries through the establishment of a new West African RFMO<sup>229</sup>. UNCLOS, the UNFSA, the FAO and the United Nations General Assembly all call for fisheries to be managed on a regional basis and for new RFMOs to be established to cover all regions<sup>230</sup>. Tuna fishing in West Africa is covered by ICCAT; however, there is no RFMO for other (mixed) fisheries. The EU has supported the development of

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<sup>227</sup> *Fisheries and poverty reduction*, op. cit.

<sup>228</sup> Commission Communication on Policy Coherence for Development: Accelerating progress towards attaining the Millennium Development Goals, COM(2005) 134 final, 1 April 2005, p.13.

<sup>229</sup> OECD, *Fishing for Coherence*, p. 18.

<sup>230</sup> For example, UNCLOS, articles 63-64, UNFSA Articles 8-14, 17, 20-23, UNGA Resolution /61/105, paras. 63-75. FAO supports regional fisheries advisory bodies, sponsors meetings of regional fisheries bodies and participates in the development of RFMOs. The High Seas Task Force has called for the strengthening of RFMOs, in its report *Closing the Net*, March 2006. See also the OECD *Fishing for Coherence* report at p. 18.

such organisations elsewhere; it should take the lead in establishing one in West Africa<sup>231</sup>. This organisation could be based on an expansion of existing organisation or could be developed from scratch with the old ones being wound up. Its members would include all West African coastal States and all States whose fishing vessels operate in the area. This organisation could undertake stock assessments, adopt TACs and quotas, manage the fisheries in accordance with accepted international principles, act as a forum to discuss and address common issues, adopt MSC measures and port State control and work to eliminate IUU Fishing.<sup>232</sup>

#### **Recommendation 17**

***The EU should consider supporting, and possibly leading, the development of a Regional Fisheries Management Organisation (RFMO) for West Africa to conserve and manage the non-tuna fish stocks, as it has in other regions of the world.***

##### **8.5.2 The future of the EU fleet**

In the long term, a successful development policy may lead to all fish in West African EEZs being taken by local fishers. This could lead to a phase-out of the EU fleet. The departure of the EU fleet would obviously cause socio-economic problems in the EU, given the dependence of certain communities are highly dependent on fishing and would require state aid for structural adjustment.<sup>233</sup> However, the adjustment might not be as difficult now as previously believed. The latest report on employment in the EU fishing sector indicates that it is becoming more difficult to persuade young people to enter the fishing industry<sup>234</sup>. Furthermore, the EU does have a policy of reducing over-capacity and is committed to doing so internationally<sup>235</sup>.

The continued presence and current activities of the EU and other DWFs seriously compromise the possibilities for future sustainable development of the fisheries sector and the entire economy in certain countries in West Africa. The EU should explore solutions for resolving the policy incoherence that would reduce the adverse effects on the fisheries and marine ecosystem and maximise the potential for sustainable development of West African coastal States.

#### **Recommendation 18**

***The EU should consider gradually phasing out its fleet off the coast of West Africa, while building up African capacity for sustainable management, providing assistance for developing the local fleet, and local processing industries, including a provision for mandatory landings.***

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<sup>231</sup> See recent press releases concerning EU support for the establishment of a new RFMO in the South Pacific, at [http://ec.europa.eu/fisheries/pres\\_corner/press\\_releases/com07\\_30\\_en.htm](http://ec.europa.eu/fisheries/pres_corner/press_releases/com07_30_en.htm) and following, under titles: "Commission looks to decisive progress on creation of Fisheries Organisation in South Pacific" (27 April 2007), "Commission tables ambitious proposal to protect marine ecosystems and fish stocks in South Pacific" (4 May 2007), "Joe Borg: decisive measures in South Pacific show progress in international governance of high seas fisheries" (8 May 2007). At the same time, the Commission deplored the failure to turn the Indian Ocean Tuna Commission (IOTC), an FAO body, into an RFMO: "Commission deeply concerned at lost opportunity to effectively combat illegal fishing in Indian Ocean", 21 May 2007.

<sup>232</sup> See UNFSA detailed provisions on regional cooperation in Articles 8-14, 17, 20-23. See also press release by European Commission in previous note, which deplores the lack of agreement to transform the IOTC into an RFMO, in part because it could be used to combat IUU fishing.

<sup>233</sup> OECD, *Fishing for Coherence*, p. 17.

<sup>234</sup> Study prepared for the Commission: "Employment in the fisheries sector: current situation" FISH/2004/4", by P. Salz, E. Buisman, J. Smit, B. de Vos, Final report, April 2006.

<sup>235</sup> International instruments, such as the FAO Code of Conduct, the Capacity IPOA, UNGA resolutions. Council Regulation (EC) No 1198/2006, European Fisheries Fund, OJEU, L 223/1, 15 August 2006; Commission Communication on improving the Economic Situation in the Fishing Industry, COM(2006) 103 final, 9 March.2006.

## **APPENDICES**

## APPENDIX 1: MAP OF WEST AFRICA

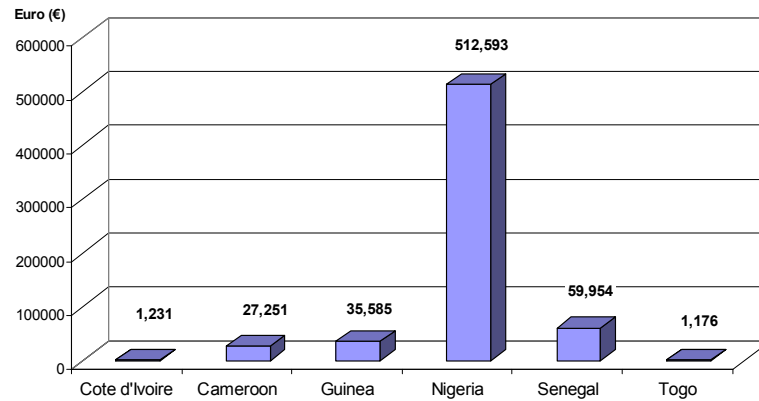


Source: FAO, *Contribution of Fisheries to National Economies in West and Central Africa – Policies to Increase the Wealth Generated by Small-scale Fisheries, New Directions in Fisheries* No 3 (Rome: FAO, 2006), at p 13 (modified).

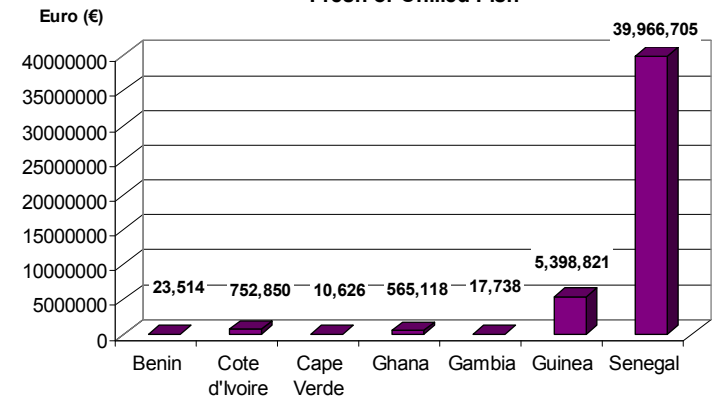
Note: This map does not include Morocco, which is within the scope of this study.

## APPENDIX 2: WEST AFRICAN EXPORTS OF FISH AND FISH PRODUCTS TO THE EU IN 2006 (IN EURO)

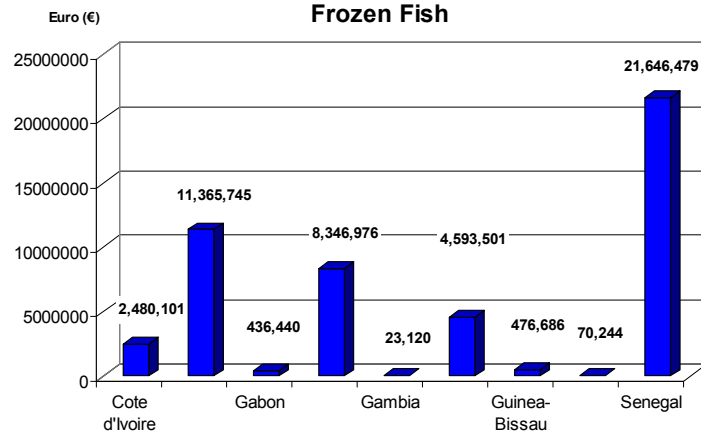
**Live Fish**



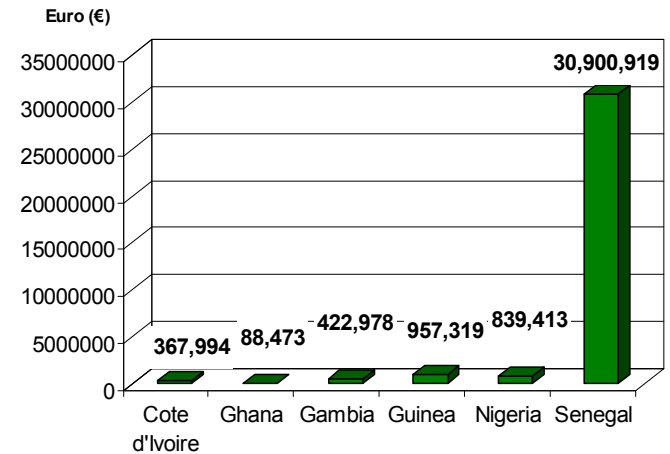
**Fresh or Chilled Fish**

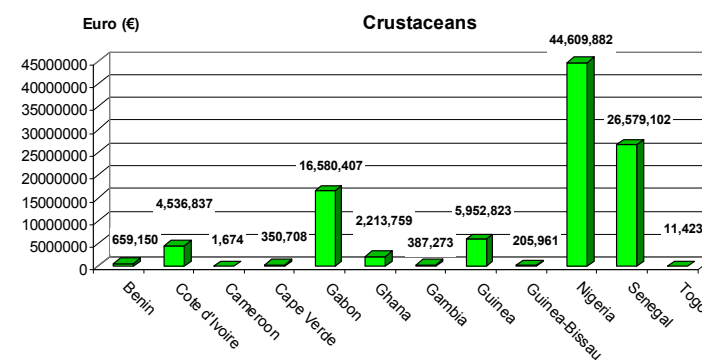
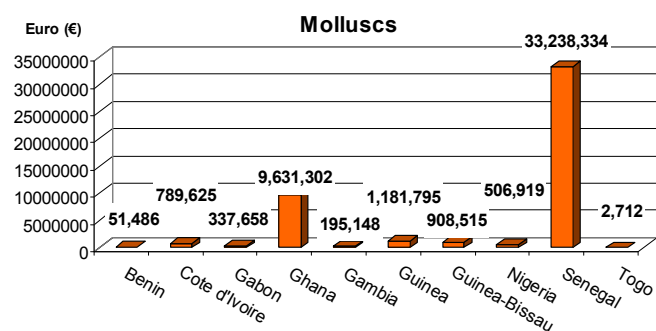
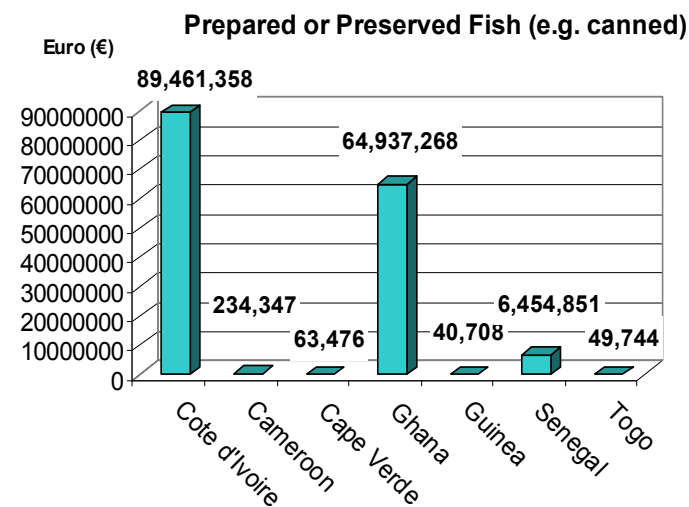
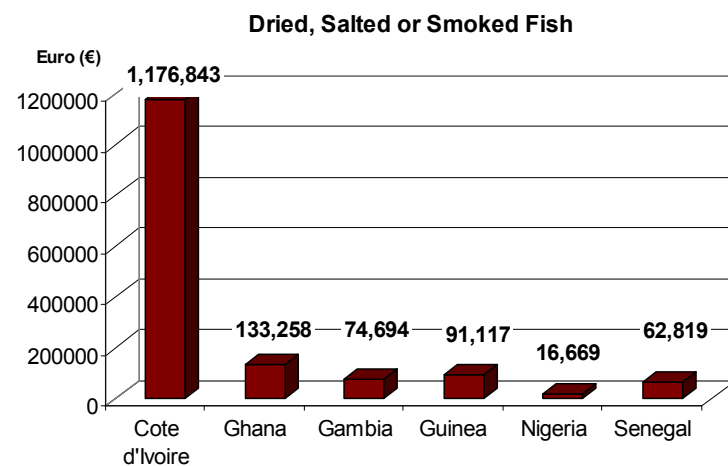


**Frozen Fish**



**Fish Fillets (Fresh or Frozen)**





Source: Eurostat Trade Database <<http://fd.comext.eurostat.cec.eu.int/xtweb/>>

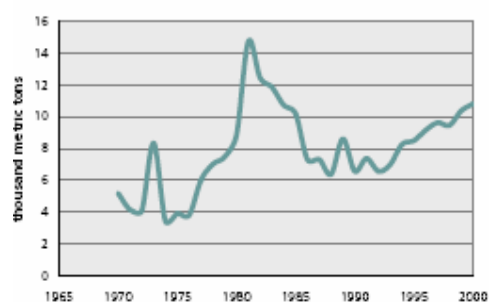


### APPENDIX 3: FISH PRODUCTION AND TRADE IN WEST AFRICA

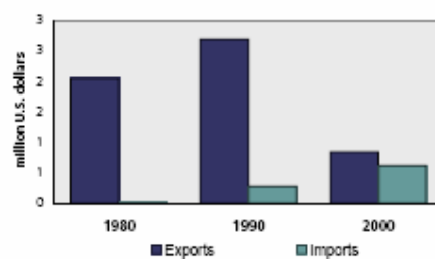
	Cape Verde	Cote d'Ivoire	Gabon	Guinea	Guinea Bissau	Mauritania	São Tomé & P	Senegal	Sub-Sah. Africa	Middle East and North Africa	World
<b>Coastal Statistics (2000)</b>											
Length coastline (a)	1,121	797	2,019	1,615	3,176	1,268	269	1,327	63,124	47,282	1,634,701
% of pop'n within 100kms of coast	100	40	63	41	95	40	100	83	X	X	39
Area of continental shelf (kms²) (b)	2,883	8,630	36,846	49,670	37,191	28,370	744	21,033	987,021	786,509	24,285,959
Territorial sea (up to 12 nm) (kms²)	59,868	12,287	19,624	14,233	19,535	19,455	15,530	11,495	871,895	649,740	18,816,919
Claimed EEZ (kms²)	742,438	157,379	180,676	96,973	861,670	141,334	142,563	147,221	7,866,074	2,015,990	102,108,403
<b>Fisheries production</b>											
Average annual catch (metric tonnes)											
Marine fish (2000)	10,821	69,618	36,581	87,513	4,800	33,076	3,500	377,968	X	2,461,334	84,411,066
Molluscs and crustaceans (1997)	40	394	1,873	8,553	1,336	24,055	25	27,539	140,424	175,995	12,055,801
<b>Fish consumption and trade (2000)</b>											
Per capita food supply from fishery products (kg/pers)	22	15	50	13	3	9	14	28	8	8	16
Fish protein as % of total protein supply	9	9	19	7	2	4	9	13	6	3	6
<b>Annual trade in fishery products</b>											
Imports (000 US\$)	617	132,146	7,151	14,585	283	661	240	1,539	778,886	718,161	60,008,337
% change since 1980	7613	70	-29	247	-5	902	X	-93	-3	134	275
Exports (000 US\$)	838	128,876	16,372	25,030	3,767	73,736	7,252	260,327	1,642,028	1,406,134	54,570,489
% change since 1980	-59	127	2,499	X	6	566	X	151	X	X	258
<b>Fishing effort</b>											
People employed in fishing and aquaculture (2000)	5,183	19,707	8,258	10,707	2,500	7,944	1,988	55,547	1,995,694	824,800	36,116,329
Docked fishery vessels 1995-98 (c)	77	62	24	19	6	166	25	176	X	16,466	1,297,017

Source: World Resources Institute website; retrieved 4.4.07; Footnotes: a. Figures should be interpreted as approximations. Estimates may differ from other published sources; b. Up to 200 meters depth. c. Data for the most recent available year in the listed range; X: figures not available

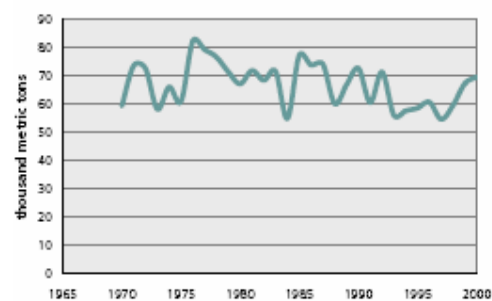
Average Annual Capture of Marine Fish, Cape Verde



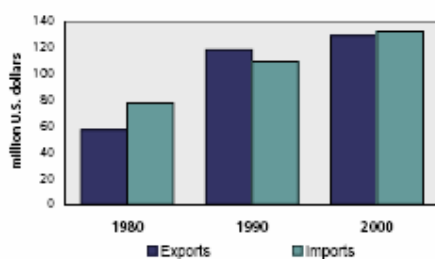
Trade In Fish and Fisheries Products, Cape Verde, 1980-2000



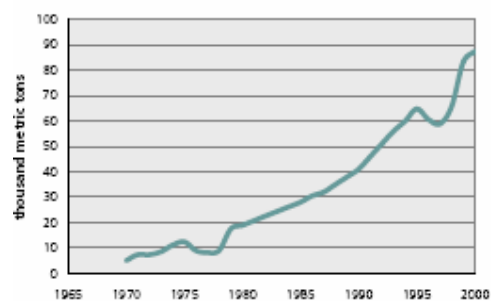
Average Annual Capture of Marine Fish, Côte d'Ivoire



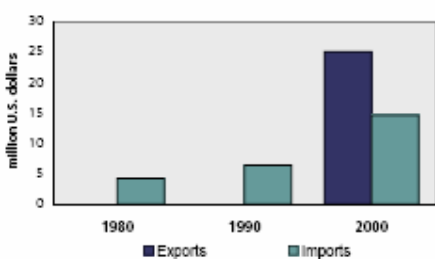
Trade In Fish and Fisheries Products, Côte d'Ivoire, 1980-2000



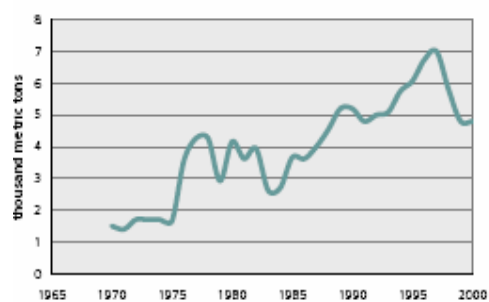
Average Annual Capture of Marine Fish, Guinea



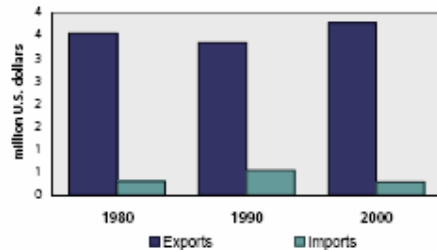
Trade In Fish and Fisheries Products, Guinea, 1980-2000



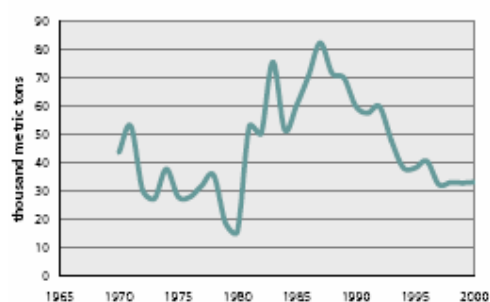
Average Annual Capture of Marine Fish, Guinea-Bissau



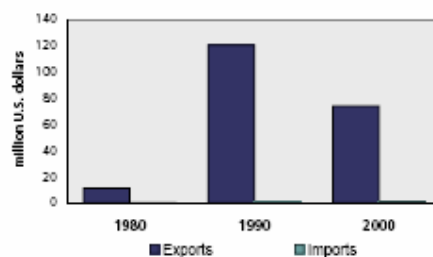
Trade In Fish and Fisheries Products, Guinea-Bissau, 1980-2000



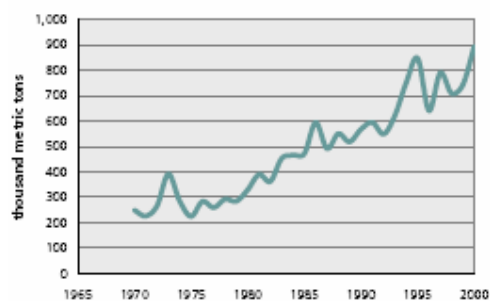
Average Annual Capture of Marine Fish, Mauritania



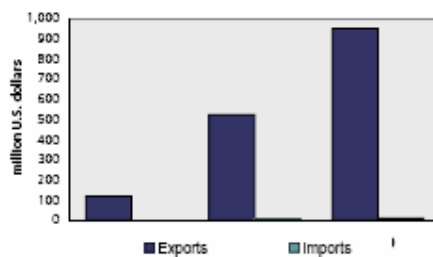
Trade In Fish and Fisheries Products, Mauritania, 1980-2000



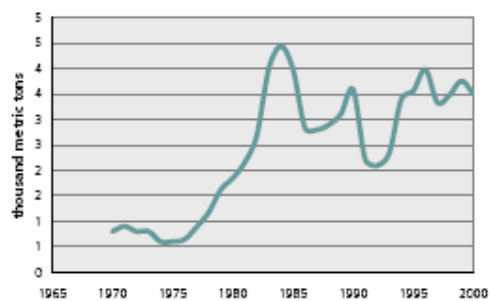
Average Annual Capture of Marine Fish, Morocco



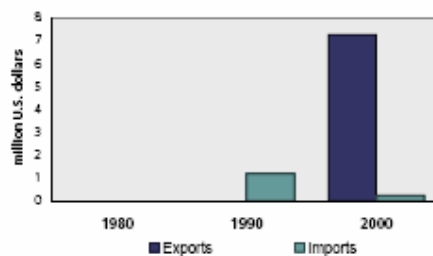
Trade In Fish and Fisheries Products, Morocco, 1980-2000



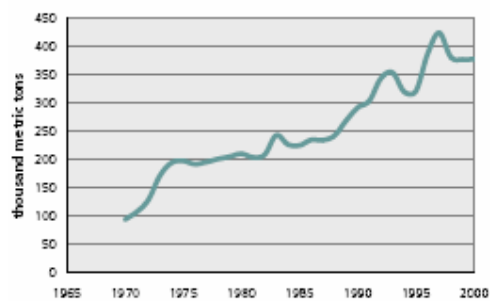
Average Annual Capture of Marine Fish, Sao Tome & Principe



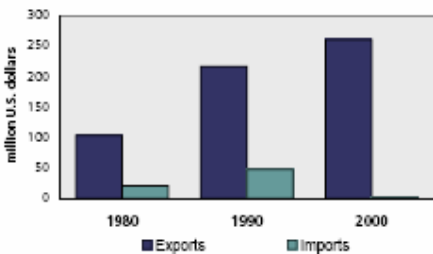
Trade In Fish and Fisheries Products, Sao Tome & Principe, 1980-2000



Average Annual Capture of Marine Fish, Senegal



Trade In Fish and Fisheries Products, Senegal, 1980-2000



#### **APPENDIX 4: SENEGAL CASE STUDY**

**[TO BE ADDED FOLLOWING DISCLOSURE OF CONFIDENTIAL INFORMATION]**

## **APPENDIX 5: MAURITANIA CASE STUDY**

**[TO BE ADDED FOLLOWING DISCLOSURE OF CONFIDENTIAL INFORMATION]**



## **APPENDIX 6: THE CONTRIBUTION OF FISHERIES IN WEST AFRICAN COASTAL STATES**

### **Cape Verde**

The Cape Verde Islands are located in the mid-Atlantic Ocean some 450 kilometres off the west coast of Africa. About 54% of the total poor population is considered to be extremely poor, while in terms of gender, about 51% of the poor are women.<sup>236</sup> Although nearly 70% of the population lives in rural areas, the share of food production in GDP in 2004 was only 12%, of which fishing accounted for 1.5%. Even though per capita consumption of fish increased from 16.7 Kg in 1996 to 31.6 Kg in 2000,<sup>237</sup> about 82% of food was imported<sup>238</sup>. Employment in the primary catching sector (1999) amounted to about 4883 artisanal fishers and 996 commercial fishers and in the secondary sector (fishmongers, usually women, processors and people involved in fisheries-related activities) it measured at about 4,786<sup>239</sup>. Capeverdean fisheries usually operate within the EEZ of the islands. However there has been a reciprocal fishing agreement with Senegal since March 1985 and Mauritania since November 1995, which allows Capeverdeans to operate in these new areas.

Usually, landings are exported to Europe, USA and Japan and more recently to South Africa. In 1997 export totalled 3,500 metric tons but by 2000, exports declined substantially to just 500 tonnes. Most of the landed product is sold in the domestic market, processed (canned or frozen) and, in some instances, is self-consumed. Cape Verde has cold storage and freezing facilities and fish processing plants in Mindelo, Praia, and on Sal.

### **Côte d'Ivoire**

In 1987 combined fish production in Côte d'Ivoire was estimated to be worth CFA F15 billion, and its share in net agricultural value added was 1.6%. Contributing to this was the tuna industry, artisanal coastal and freshwater fishing, a large smoked fish industry; and a fleet of privately owned trawling, sardine seining, and shrimping vessels. Production from small-scale fisheries represented about 50% of total annual landings in the country. In the 1980s, canned fish was the country's seventh largest export commodity in revenue producing around 20,000 tonnes but this only slightly exceeded foreign exchange costs for 100,000 tons of frozen imported fish product. Imports supplemented local canoe and fleet catches, which met about half of domestic demand. Ivorian coastal waters probably reached their maximum sustained yield in 1988, and possibilities for growth in the fishing sector were thought to be limited without costly research and development.

### **Gabon**

Gabon has about 1.4 million inhabitants. It is one of Africa's most urbanized countries with approximately 75% of the population living in two major urban centres and about fifty smaller towns. In 2004, Gabon's per capita income was estimated US\$5,439, giving it one of the highest wealth indicators in Africa. Fish consumption levels in excess of 40 kg per capita also make its inhabitants the biggest consumers of fish on the continent. Recorded fish production in 2004 was 45,000 metric tonnes. In 2004 some species and regions within the Gabonese EEZ were thought to be overexploited, whilst other species and regions appeared underdeveloped.

In the past there has been little transparency in the licensing and collection of fees and insufficient capacity for monitoring and control. Total allowable catches (TACs) and exports have not been effectively controlled and the fisheries department relied on unilateral declarations from fishing companies. The number of boats operating in Gabonese waters was also not monitored; hence the level of illegal fishing remained unquantified. A preliminary survey indicates that Gabon's pelagic resources are degraded under current harvesting levels, although this data needs to be confirmed

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<sup>236</sup> Cape Verde - First Poverty Reduction Support Credit - World Bank.

<sup>237</sup> A PROFILE OF FISHERIES OF CAPE VERDE PROMEX - August 2002

<sup>238</sup> The World Fact book. <https://www.cia.gov/cia/publications/factbook/print/cv.html>.

<sup>239</sup> The unemployment rate in 2000 was 21%.

The Government now sees improved management<sup>240</sup> of the fisheries sector as a prospective revenue earner, increasing cash incomes for poor communities and households, and providing an alternative source of local food and food security. The Letter of Sector Policy adopted in May 20.04 embodies this new vision for the development of the fisheries sector. It calls for:

- the setting aside a number of over-exploited marine areas
- the adoption of a new fisheries code
- implementation of regulations which will simplify the fiscal regime
- and the implementation of a modern comprehensive control system.

These provisions represent an initial expression of the Government's willingness to engage in a far-reaching reform process to increase the sector's contribution to the economy while securing the natural resource base. However, the absence of a comprehensive strategic sector analysis makes it difficult to develop an accurate vision for long-term development of the sector or to identify and move forward with solid reforms (World Bank 2005).<sup>241</sup>

#### Large-scale offshore fishing.

Large-scale offshore fishing involves large vessels operating within the framework of agreements which centre on the EC, (based on a reference tonnage of 10,500 tons for a fleet of 64 ships) and Japan, (with a fleet of 30 longliners with no reference tonnage specifications). The compensation arising from these agreements amounts to €1,262,500 or 828 million F CFA (EC), a development program for the fishing sector (more than 8 billion F CFA over 4 years) and a variable portion dependant on the number of licenses issued (Japan). When the reference tonnage is reached or declared (in Japan's case) the difference between the revenue earned and the estimated landing value (800 F CFA per kg), is almost 16%. However it is difficult to check the actual tonnage landed because there is no direct systematic declaration by the ship owners. Independent verification of the catch statements would no doubt greatly assist in the setting of fees.

The lack of port facilities and services make landings for foreign large scale offshore ships difficult which results in a significant loss of earnings for the coastal state. On shore processing from large-scale fishing has diminished since the decommissioning of the production plant. It has also been suggested that the national fleet is underdeveloped due to high costs and exchange rates and a lack of institutional support for Gabonese ship owners. Few Gabonese national are employed on large scale industrial boats because of a shortage of skills. Exports of fish products in 2002, (excluding smoked fish), were around 2,900 tonnes, 2,100 tonnes of which were shrimp which were valued at around 10 billion F CFA. Imports were around 7,300 tonnes, 3 billion F CFA.

#### Large scale coastal fishing

In 2002, the production of coastal large-scale fishing reached 11,000 tons corresponding to a value of 20.5 billion F CFA. This was carried out by the local fleet comprising of 87 ships (up of 36 trawlers, 42 shrimp vessels, 8 tuna vessels and 1 creel boat). Large-scale coastal fishing is largely dominated by foreigners, mostly Koreans, Chinese and Europeans.

Small-scale inshore fishing provided 20,500 tons of product in 2002, representing an estimated worth of 19 billion F CFA. Even though fishing is generally confined to estuaries and lagoons from log canoes, 75% are motorized and operated by around 5,000 fishers, thereby providing a significant number of jobs. During periods of high tide fishers supplement their income with agriculture and forestry activities<sup>242</sup>.

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<sup>240</sup> Suggested options include: improving the economic management of industrial licenses and agreements, halting illegal activities, reducing the allowable catch in regions where the resource-base is under threat, opening the southern grounds to sustainable exploitation could potentially increase the benefits from industrial off-shore fisheries.

<sup>241</sup> World Bank Gabon - Natural Resources Management Development Policy Loan 2005/10/19. World Bank.

<sup>242</sup> Gabon - Natural Resources Management Development Policy Loan 2005/10/19. World Bank.



### Small-scale coastal fishing.

Production from small-scale continental fishing was 9,400 tons in 2002, which corresponds to an estimated value of 8.5 billion F. CFA. It is practiced by 3,500 fishers almost all of whom are Gabonese, who use a fleet of 1,800 log canoes, a small number of which are motorized.

### **Guinea**

Guinea has a population of around 7,600,000, the largest continental shelf area of any country bordering Atlantic Africa (56,000 km<sup>2</sup>) and a coastline of 320 km. The coastal zone, which comprises 15% of the country's territory, is home to about 40 per cent of Guinea's population. The importance of fishing (5% of rural employment) is reflected in its contribution to the national diet in which fish provides 40% of the animal protein. However the Government hopes to raise the national level of consumption further through its 2003 national fisheries policy from 13kg per person to 17kg by 2010, and to increase food security through fish consumption. Total fishery production (from both artisanal and industrial sectors) in 2001 was more than 135,000 tonnes. Guinea does not have the coastal facilities to receive and process industrial amounts of fish catches for export so consequently 'leakages' from the economy and resource base, are high.

Along the coast there are approximately 30,000 artisanal fishers who rely on the sea for their livelihoods<sup>243</sup>. However larger vessels frequently encroach upon the zones used for traditional fishing which often results in the destruction of sensitive habitats such as reefs and seagrass beds (fish nursery grounds and biodiversity hotspots), and of equipment and fishing gear used by small-scale fishers. This creates a climate of conflict and fear amongst fishing communities.

Local communities use a multi-activity-based natural resource exploitation and management system, differing slightly from village to village but mainly based on rice cultivation, traditional fisheries, palm oil extraction, salt farming, and hunting. They distinguish between production zones (palm trees), extraction zones (mangroves, savannahs) and protected zones (sacred forests). These activities are linked to (i) a trading network inland and with bordering countries for smoked fish (ii) exports of salt-dried fish to Senegal, Gambia and Guinea-Bissau, (iii) exports of sharks to international markets, (iv) the trade of palm oil to coastal towns such as Bok and Kamsar, and (v) imports of other goods.

Resource pressures further out to sea are thought to result from industrial fishing, which is dominated by foreign fleets and largely uncontrolled. The overexploitation of the fish resources arises not only as a result of excessive fishing effort but also the nature of fishing practices some of which can be highly destructive and non-selective. This can severely compromise the reproductive capacity of commercial and non-commercial marine species. For example, Guinea's coastal and inland fish resources were halved in just 6 years between 1986 and 1992 and now stand at a fifth of what they were 10 years ago. The loss of mangroves and other coastal habitats also leaves settlements vulnerable to severe storm events and erosion

Overfishing is also a serious problem. For example, Guinea's coastal and inland fish resources were halved in just 6 years between 1986 and 1992 and now stand at a fifth of what they were 10 years ago. A case study of illegal fishing in Guinea was carried out by the Environmental Justice Foundation (2005). They suggest (based on the findings of the UK consultants MRAG 2005) that \$110 million is lost from Guinea's waters every year (the worst in Africa) despite the allocation of € 2.7 million (1996-2003) from the financial compensation package provided by the EU to combat this. They also traced a number of vessels known to have been fishing illegally off Guinea's coast to Las Palmas, the largest entry port for West African fish coming into Europe. Several vessels were found to have been authorised by DG Sanco to export fish to the EU. EJF reported that illegal fishing adds 64% to the country's recorded legal catch. The discard rate varies from fishery to fishery but shrimp accounts for the highest level at 33%.

### **Guinea Bissau**

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<sup>243</sup> SFLP 2002. Fisheries in the Livelihoods of the Poor in West Africa. Benin.

Guinea-Bissau is among the world's least developed nations and depends mainly on agriculture (78%) and fishing (18%) to support its rural population. About 90 per cent of the fishers from Guinea produce 44 % of the total catch whilst the remainder is produced by foreign nationals. According to the National Institute of Statistics, the contribution of fisheries to GDP represents only 3.7%. The estimated maximum catch of artisanal fisheries in 1997 was 5 400 tons. About 35 per cent of the landings are of first and second quality fishes, big and small demersals, pelagics and shrimps. Processing (smoking salting and drying) is mainly carried out by women. More than 15,000 people work in fish processing and commercialization. Guinea-Bissau exports some fish and seafood, although most fishing in Guinea-Bissau's waters is presently not done by Guinea Bissau nationals. Guinea-Bissau has signed agreements with the European Economic Community (EU), Senegal, Conapemac (Marine Fisheries National Cooperation of the Republic of China), and Côte d'Ivoire and with the Fisheries Sub-regional Commission<sup>244</sup>.

### **Mauritania**

Mauritania is a very poor nation whose 2.3 millions inhabitants are largely nomadic desert dwellers experiencing frequent and prolonged droughts. (WWF1998). GDP averages €275/inhabitant, 46% of the population is living below the poverty line, life expectancy is 52 years and more than 25% of Mauritians are unemployed. After the declaration of its EEZ in 1979 Government policy required all foreign companies to establish joint ventures (with 51% Mauritanian ownership) and a) land their catches in Nouadhibou or to have them inspected at sea, b) construct fish processing facilities at Nouadhibou and c) employ at least 5 Mauritians per vessel. Their intention was to provide employment, enhance national food production, generate currency and promote the distribution of wealth. By 2000 the number of jobs created by the various branches in the fisheries sector was probably about 27,000, 21,000 of them in non-industrial fishing and about 6,000 in industrial fishing. However, the supply of fish to the local market is still said to be inadequate because almost the entire catch is exported<sup>245</sup>; only 10% of the stocks off Mauritania are accessed by the national fleet.

The present provisions of the agreements with the EU have the potential to increase fishing over-capacity, especially in relation to the already over-fished octopus stock where catches have fallen by 50% in 4 years. This situation affects the creation of jobs in non-industrial octopus fishing, where there has been a drastic slump in direct employment since 1997. Overfishing has also resulted in a decrease in the reserves of certain demersal species, some falling by 50% in 15 years; others such as the sawfish have disappeared altogether.

The activity of European vessels recorded along the Mauritanian coast is significantly higher than along the Senegalese coast. In a report produced for the FAO in 1997, Kelleher presented the views of the Mauritanian Cephalopod Marketing Organisation (SMCP) who considered the permits issued to EU vessels to be prejudicial to the locally based industry in two ways: firstly the effort exercised by the EU fleet reduced the CPUE (catch per unit of effort) for the Mauritanian fleet and secondly the large quantities of cephalopods placed on the international market by the EU operators, resulted in a fall in prices for the Mauritanian industry at certain times. Kelleher went on to say that 'the cephalopod fishery in Mauritania is clearly heavily overexploited and available statistical information shows that fishing effort is probably twice that required to harvest the resource economically'. He concluded that because the local fleets provide considerable employment both at sea and on-shore, in the longer term, they may prove to be an economically more effective means of exploiting some species such as cephalopods rather than relying on the continued presence of the distant-water cephalopod fleets. The author also notes that a steady increase in prices has supported higher levels of effort in this fishery (which is probably true across the board).

### **Morocco**

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<sup>244</sup> FAO Country profile website.

<sup>245</sup> Fisheries now represent 41% of export revenues: Environmental impact of trade liberalization and trade-linked measures in the fisheries sector. UNEP. National Oceanographic and Fisheries research Centre (CNROP). February 2002.

Morocco has a coastline (3500km) bordering two bodies of water, the Atlantic Ocean and the Mediterranean Sea, and an exclusive economic zone of 1.2 million km<sup>2</sup>. Its waters abound in fish; there are 7136 different species listed, including vertebrates, arthropods and molluscs. Morocco is the top fish exporter in Africa and the 25<sup>th</sup> largest in the world. It is also the premier sardine exporter worldwide. The fisheries sector represents 3% of GDP and employs, directly or indirectly, about 400,000 people (including more than 110,000 seamen and officers). Fisheries production is around 960,100 tonnes or DH 6 billion/US\$ 700 million and exports amount to DH 10.6 billion/US\$ 1.18 billion. The National strategic plan hopes to raise annual domestic fish consumption from 9 kg to 14 kg per inhabitant<sup>246</sup>.

Small-scale fishing is a seasonal activity located mainly in isolated coastal areas close to small villages and ports. The fishers use dories to catch fish, molluscs and crustaceans. This category also includes hand collection of algae and mussels and onshore fishing using lines. Most fishers live primarily from agriculture and livestock and fishing activities represent a supplementary source of income. They fish mainly during spring and summer when the height of waves does not exceed 2 meters.

The Moroccan industrial fleet started in 1972 and grew rapidly between 1973 and 1998. According to best estimates, the total number of dories (small vessels) in Atlantic Morocco doubled in 10 years, targeting the lucrative octopus stock. On 1 November 2004 The Minister of Agriculture, Rural Development and Maritime Fisheries for Morocco announced the adoption of stringent measures to prevent the exhaustion of fisheries resources from over-fishing<sup>247</sup>. In the particular case of octopus, the Minister said that reserves had shown a sharp decline over recent years, dropping from 100,000 tonnes in 2001, to just 8,000 tonnes by the end of July 2004.

In 1972, there were 26 purse seiners but by 1997 this leapt to 323 and the number of coastal bottom trawlers tripled from 104 to 331 in 1994. Vessels using a variety of fishing gear, so called mixed fisheries, went from 48 in 1976 to 517 in 1998. The number of Mauritanian industrial vessels rose from 4 in 1973 to 454 in 1998.

#### **Historical details of fishing agreements in Morocco**

- Bilateral agreements with the EU and Russia were not renewed (until recently) because of the biological resting period necessary to rebuild stock levels.
- Morocco-Japan Fisheries Agreement: This agreement was concluded in 1985 and annually renewed since then. It only covers migratory species (such as tuna). This co-operation agreement also extends to other fields, such as training, scientific research and the construction of fishing villages.
- Fisheries agreements and co-operation protocols: with Arab and African countries, including Tunisia, Mauritania, Gabon, Senegal, and Nigeria.<sup>248</sup>

#### **São Tomé and Príncipe**

São Tomé and Príncipe (STP) is an island nation in the Gulf of Guinea, and one of Africa's smallest and poorest countries. Recent population surveys indicate a small population (150,000), a population growth rate of 3.2%, and a relatively young population, with 48% under 14 years of age (World Fact Book 2004). A UNDP survey in 2000 found that 54 % of the population lives in poverty: 39 % are poor and 15 % are extremely poor<sup>249</sup>. The population relies on fishing to supply most of its protein though its economy has been heavily supported in the past by agriculture, particularly cocoa. The productivity of STP's waters is limited by the small continental shelf (1,455 km<sup>2</sup>), an absence of any upwelling and a scarcity of zooplankton and phytoplankton. Fisheries are essential to the nation's

<sup>246</sup> Untitled publication. [www.moroccousafta.com/downloads/Fisheries.pdf](http://www.moroccousafta.com/downloads/Fisheries.pdf).

<sup>247</sup> In 1992, all the boats landed in national ports, however a study of fish marketing carried out in 1993 estimated that the landings processed through illegal channels amounted to 60% of the total.

<sup>248</sup> Untitled publication: [www.moroccousafta.com/downloads/Fisheries.pdf](http://www.moroccousafta.com/downloads/Fisheries.pdf)

<sup>249</sup> São Tomé and Príncipe. Joint IDA\_IMF staff advisory note on the poverty reduction strategy paper. March 3, 2005 World Bank.

health and welfare, with local fisheries supplying over 60% of the protein consumed by local populations and offshore fisheries providing vital revenue to the nation. Food security is good and per capita fish consumption comparatively high (23.6 kg fish per capita)<sup>250</sup>. Both men and women play vital roles in this sector, with men fishing and women (palayes) acting as fishmongers. The palayes are a vulnerable group within society, beginning work at a young age (~14 years) and often forgoing education. A Department of Fisheries survey found a 45.6 % illiteracy rate for palayes, compared to 18.5 % nationally.

Approximately 2,000 artisanal fishers operate across 20 landing sites in the country, mostly from dugout canoes and using handlines, seines and gillnets, and sometimes blast and spearfishing. Few boats are motorized due to limited availability of repair equipment, mechanics, and fuel. As of November 2004, 2,150 boats were registered (503 motorized boats, 1,647 boats with sails). STP does not have a national industrial fishery and its offshore resources are exploited through contractual fishing access agreements, mainly with the EU and Japan. The main hindrance has been the large capital investment required and the need to meet sanitary requirements for export to the EU<sup>251</sup>.

Ocean resources are said to be at risk due to considerable levels of unregulated exploitation with the exception of EU skippers who are required to register with local authorities and report their catches to the São Tomé Ministry of Fisheries. It is somewhat surprising that the latest fisheries agreement lacks many of the standard control mechanisms seen in the EC's agreements/protocols with other countries with no provision made for satellite monitoring systems or other surveillance equipment<sup>252</sup>.

## Senegal

Senegal had a population of 6 million in 1996 (3.5 economically active) and relied on agriculture and mining as its main economic activities. A downturn in these industries, droughts and agricultural crises during the 1970s, prompted the Government to turn to fisheries. Despite increasing urbanisation, fishing by traditional methods remains a vital occupation, a key part of the country's economy and way of life. Unlike almost any other West African nation, Senegal has a very long tradition of skilful artisanal fishers who are able to take advantage of the country's rich marine resources. Fish is a major source of protein for the Senegalese population providing 75% of local protein needs<sup>253</sup> with the majority supplied by small-scale fishers.

By 1998 a total of 100,000 nationals were directly employed in the small-scale fleet (from 25,000 in 1966). Another 600,000 people (15% of the working Senegalese population) are employed in related industries so consequently fishing plays a dominant role in the Government's policy towards employment generation.

Between 1995 and 2003 Senegal exported US\$250-300 million of fish products each year (FAO 2006) and is now the most important export sector of the economy, overtaking groundnuts as the country's primary export. (Kelleher 1997). Brown (2005)<sup>254</sup> estimates that earnings in 1999 were in the region of US\$314 million twice the country's debt repayment for that year.

By the late 1990s, fishing in Senegalese waters exceeded the estimated annual sustainable catch by an average 30,000 tonnes. Yields of conch, an important part of the Senegalese diet, dropped from 20,000 tonnes in 1989 to 5,000 tonnes in 1998 due to the depletion of stocks. By 2000, the average landed size of most export species had fallen below the level of sexual maturity suggesting that fishing operations had increased beyond sustainable levels (Brown 2005). As a result certain sustainability and social justice measures have been added to its fishing agreements.

The fishing sector in Senegal, as in many West African coastal states, finds itself confronted with important challenges, both in terms of production and market supply. Stocks with a high commercial

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<sup>250</sup> Pew Institute of Ocean Sciences website. [www.pewoceanscience.org/projects/Sao\\_Tome/intro.php?ID=62](http://www.pewoceanscience.org/projects/Sao_Tome/intro.php?ID=62) - 20k -

<sup>251</sup> <http://www.earthinstitute.columbia.edu/cgsd/STP/documents./STPFishingReportEnglish.pdf>.

<sup>252</sup> Afrol News Press release 13 March 2007. [www.afrol.com/countries/sao\\_tome\\_and\\_principe](http://www.afrol.com/countries/sao_tome_and_principe)

<sup>253</sup> [www.tve.org/earthreport/archive/doc.cfm?aid](http://www.tve.org/earthreport/archive/doc.cfm?aid)

<sup>254</sup> Human Development Report. Policy Incoherence: EU Fisheries Policy in Senegal. Brown O. 2005 UNDP.

value have been overfished and enforcement of the regulations is becoming increasingly difficult as resources diminish<sup>255</sup>. It is worth noting that in Senegal, the financial contribution received from the fishing agreement represents only 6% of the value of national fish exports whilst for a very poor country such as Guinea Bissau, the payment is an essential contribution to the National Treasury (Lenselink 2002).

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<sup>255</sup> Policy Implementation and Fisheries Resource Management; Lessons from Senegal. UNEP, Geneva.GE.04-00631–April 2004–2,000. ISBN 92-807-2436-3.

## **APPENDIX 7: 'NEW EU/IVORY COAST FISHERIES PARTNERSHIP AGREEMENT'**

11 April 2007

On 5 April 2007, the European Commission, on behalf of the Union, and the Ivory Coast initialled a new fisheries partnership agreement in Abidjan. This new agreement, which will cover a renewable 6-year period, will replace the current framework agreement in place since 1990, due to end on 30 June 2007. In line with the philosophy of partnership agreements, the focus will be on providing full support to the Ivory Coast in working towards achieving sustainable fishing in its waters. The new protocol, also agreed for a period of 6 years, will exclusively concern fishing possibilities on tuna. These have been reduced from 9,000 to 7,000 tonnes per year. Licences have been agreed for 25 seiners and 15 surface long liners. The annual financial contribution, which will amount to €595,000, will be entirely allocated to the establishment of responsible and sustainable fishing in the waters of Ivory Coast.

Demersal fisheries (close to the sea floor), available under the current agreement, have not been included in the new protocol due to the lack of sufficiently detailed data and of EU interest. The licences for tuna vessels have been reduced from 34 to 25 for seiners but increased from 11 to 15 for the surface long liners. Given the overall reduction in fishing possibilities, the financial contribution has been decreased from the current € 1,065,000 to € 595,000 per year.

The fishing possibilities available under the new protocol reflect the scientific recommendations of the relevant regional fisheries organisations. These possibilities could be increased subject to scientific advice and a request from the EU. Other fishing possibilities could also be envisaged on the basis of experimental fishing. Should this be the case, the necessary management measures would be examined to ensure the protection of the marine environment.

This new partnership agreement will enable the two Parties to establish a constant dialogue on the fisheries policy of the Ivory Coast. Both agreed on working to strengthen the institutional capacity in fisheries management and to improve control and monitoring of fishing activities so as to ensure sustainable fishing in the waters of the Ivory Coast. They also agreed to work on a protocol on the implementation of a satellite-based vessel monitoring system in the Ivory Coast. Vessels operating under this fisheries agreement come from Spain, France and Portugal.

## **APPENDIX 8: 'EU TRAWLERS DUMPING DEAD FISH OFF WEST AFRICAN COAST'**

By Paul Redfern  
The East African  
8 April 2002

THOUSANDS OF tonnes of fish are being dumped overboard by the large European Union fishing vessels trawling off the West African coast, according to leading environmentalists. Because of the so-called industrialised trawling techniques used by EU fishing vessels off the African coast, large amounts of fish are brought in that are not wanted and it is said that up to 90 per cent of catches are being dumped overboard. While the EU has denied the claims and insists that it is fishing within the agreements set with governments in Africa, Greenpeace says that fish stocks are being rapidly depleted, threatening local fishers' livelihoods.

Recently, the United Nations Environment Programme reported that EU fishing fleets were endangering poor fishing communities off the coast of West Africa. The Unep report said that many poor West African countries, including Senegal and Mauritania, had been effectively forced to sell off their fishing rights in a sea of agreements that are ruining their natural resources. Overfishing is also said to be affecting fishing communities off the coast of East Africa, but Unep says it is in West Africa that the effect is most pervasive. It says that the EU has paid the Mauritanian government £300 million (\$480 million) to fish in its waters between 2001 and 2006 but stocks are already bad depleted. Unep says there are now 251 industrial, factory-style foreign fishing vessels operating off the coast of the West African state. "Overfishing, due to a failure by some fishing boats to comply with the rules, lack of enforcement and a shortage of fisheries protection boats, has led to a dramatic fall in catches as fish stocks are over-exploited," the report says.

Neighbouring Senegal, which had a similar agreement with the EU has apparently refused to sign a new one unless it gets better terms. The Guardian newspaper says that two thirds of Senegal's export earnings come from the fish exported to Europe and it adds that fish is the staple diet of coastal communities and is no longer available in some places because stocks are so low.

At a special conference in Geneva on the issue last month, delegates were told that numerous developing countries faced having their fishing stocks plundered foreign fishing fleets, some of which are from the EU and some Russian or Japanese, which had then moved onto new areas. Overfishing also has a dramatic effect on local employment with the number of traditional octopus fishers in Mauritania declining from 5,000 in 1996 to 1,800 now because of overfishing. The UK-based Royal Society for the Protection of Birds which has been campaigning for fair fishing agreements which do not deplete stocks says that fish "have a habit of jumping onto the rich man's table. Over half the fish consumed in the EU is now said to come from countries outside Europe and now there are urgent calls for strict safeguards to be put in place before any future fishing agreement is made. Klaus Toepfer, Unep's executive director said that fish stocks in many developing countries "have been severely depleted as too many often heavily-subsidised fleets chase too few fish. As a result they are looking elsewhere for catches.

## **APPENDIX 9: 'EU TRAWLERS GET FISHING RIGHTS OFF AFRICA FOR £350M'**

By Stephen Castle in Brussels  
The Independent  
24 July 2006

The EU has signed its biggest-ever fisheries deal with an African nation, sparking a debate on whether Third World oceans should be exploited now that many European fish stocks have collapsed.

In what is seen as a test case for agreements on sustainable fishing, the accord will allow about 200 European vessels to fish for shrimps, hake, tuna and other species in waters off the Mauritanian coast.

The deal is worth €516m (£350m) to the Mauritanian government over six years and the European Commission says the "great part" of the cash will be devoted to supporting "responsible and sustainable fisheries" off Africa.

Joe Borg, the European fisheries commissioner, stressed the mutual benefit in terms of "jobs, strengthened monitoring and control, conservation of resources in compliance with scientific assessment and environmental protection".

But conservationists fear that the accord is based on incomplete knowledge of the state of fish stocks and could precipitate the devastation of some species.

The agreement replaces an €86m-a-year accord with Mauritania, just 5 per cent of which funds sustainable fisheries projects.

The new deal scales back fishing of some depleted stocks including cephalopods, which include octopuses and squid, and demersal species, which dwell on or near the sea floor. Fishing for cephalopods - for which the EU has the right to do with 55 vessels - will be reduced by 30 per cent while the catch for demersal species will be slashed by about 60 per cent.

Of the €86m the EU will pay Mauritania annually for six years, €10m will go towards upgrading ports, modernising fishing fleets, strengthening scientific monitoring of stocks and improving standards of safety at sea.

In addition, licence fees from European fishers may add another €22m a year for Mauritania, which has population of more than three million. That represents almost one-third of its national income.

Vessels from more than a dozen nations, including Britain, Spain, Portugal and Germany, are expected to fish in Mauritanian waters.

But campaigners are worried about elements of the deal and the other 13, bilateral fisheries agreements in force.

These often lucrative deals present a dilemma for west African governments. They have to balance their desperate need for foreign exchange earnings with the need to safeguard stocks which help feed their people and provide rare economic opportunities for many communities.

Saskia Richartz, Greenpeace's EU marine policy adviser, said the "key problems" still existed. "Going into new regions is a result of overcapacity of our fleets and unsustainable fishing of our own fish stocks. Consequently, we have to go further afield to fish," she said.

Greenpeace is worried that African stocks are already under growing pressure from indigenous fishers and illegal fishing by European, Chinese, Russian and Korean vessels. It points to research showing Somalia may be losing \$300m (£160m) in annual revenue, and Guinea \$100m, from undeclared fishing. These catches are not factored in to the scientific calculations and could mean stocks are more at risk than first thought.



There are also doubts about the capacity of west African countries to monitor the situation. And campaigners say it is vital that European catches are cut as the Mauritanian fleet develops its capacity.

The new deal comes into force next month, pending formal agreement by EU member states.

## APPENDIX 10: 'NET LOSSES'

By Annie Kelly  
The Guardian  
11 April 2007

While Pakistan encourages foreign trawlers to fish in its seas, its traditional fishing communities are facing ruin. Now there are warnings that other countries are being pressured to follow its lead. Annie Kelly reports

There is an old proverb, beloved of fisherfolk in Pakistan, that says when all else fails the sea will provide. Now, after centuries of surviving on fish such as the tuna and shrimp that thrive in Pakistan's coastal waters, many traditional fishing communities are facing ruin as the sea is stripped bare by foreign trawler fleets and industrial overfishing.

According to trade campaigners, it is a story that is being replicated in poor fishing communities in developing countries across the world. And as the current round of World Trade Organisation (WTO) negotiations splutter back to life, the demise of Pakistan's fishing communities is being held up as a warning of the impact that the moves to further liberalise global fishing could have on some of the world's most deprived communities.

The Pakistani Maritime Security Agency (MSA), which polices fishing along Pakistan's coastline, says there are currently 23 mid-size trawling boats and 21 trans-national trawlers operating with licences in Pakistani waters.

Local fishers in Ibrahim Hydri, a small fishing town in the sparse Sindh coastal province, unload their fishing boats just yards from half-a-dozen trawlers with Chinese insignia in the town harbour. Many dispute the official figures, insisting that around 100 foreign ships have been spotted in local waters in the last 12 months.

"Since the government has let these foreign ships into our waters, our stocks have depleted and there is nothing left," says local fisherman Abbas Ali. "For hundreds of years, our forefathers have fished these waters, but our children are going to end up beggars."

He says the town's small wooden fishing boats are no match for the trawlers. "It's like trying to race a truck with a bicycle," he says. "In just a few years, these people have come here, destroyed the sea, and stolen our livelihoods from us."

In recent years, Pakistan has steadily been stepping up its efforts to exploit what it terms the "untapped potential" of its fish stock. In 1982, the government opened its waters to international fishing fleets, and in 2003-04 alone more than 90,255 tonnes of fish and fishery products were exported from Pakistan, to countries including the UK, Japan and Sri Lanka.

Pakistan's 2001 deep-sea policy set out a plan to further increase foreign exchange earnings from the increased export of fisheries and fishing products. The same policy relaxed regulations that restricted trawler activity to a zone 35km-200km from shore after pressure from "friendly" trading partners, such as China and Taiwan. Licensed medium-sized trawlers are now allowed to fish 20km from shore, an area previously reserved exclusively to protect the livelihood of local fisherfolk.

Men scrubbing down their boats at Ibrahim Hydri say the impact trawling and overfishing has had on their livelihoods and on the marine environment has been devastating. They estimate that the daily catch has declined by 70%-80% in the last decade. Five years ago, it took Ali 36 hours to catch 1,000kg of fish that fed and supported his family. Now he and seven other men return after 15 days at sea with a catch that weighs in at just under 500kg.

As he hauls his nets to shore, Ali reels off the names of more than a dozen fish species no longer found in the surrounding waters. Reports by the Pakistani Fisherfolk Forum (PFF), an environmental campaigning group set up to protect the rights of local fishing communities, says more than 50% of local marine species have been almost wiped out by intensive fishing of Pakistan's sovereign waters.

According to its research, only 10% of the fish caught by the trawlers' nets can be sold on the international markets, leading to the other 90% being pumped back into the sea and increasing marine pollution in shallow waters.

"Tonnes of fish that could have been used to sustain the livelihoods of local fisherman have been needlessly destroyed through foreign trawling," says Mohammad Ali Shah, chairman of PFF. Foreign trawlers, he says, are the "last straw" for fishers who have seen their livelihoods destroyed in the name of progress.

Pollution from the trawlers joins 300 million gallons of urban sewage and 270 tonnes of industrial waste that is pumped into the sea from multiple channels every day. Dams and barrages built with World Bank loans along the delta of the Indus, Pakistan's longest river, have starved marine channels of fresh water, resulting in many inland fishing communities migrating to the coastal waters in search of fish. Pollution and over-population have contributed to the demise of the mangroves that provided breeding grounds for shrimps that previously provided the backbone for much of the local economy.

that, despite pressure from the UN's Food and Agriculture Organisation (FAO), Pakistan has yet to undertake an up-to-date fish stock survey. This means that licences to foreign trawling fleets could be issued without the government having a clear idea of how many fish are left in Pakistan's waters.

In a new report, entitled *Taking the Fish*, ActionAid, one of the international non-governmental organisations working with PFF, says the exploitation of Pakistan's marine environment is being done with no regard for the environmental or social impact on communities or resources. It is now calling on Pakistan's government to ban foreign trawlers and institutionalise in its fishing policy the FAO's code of conduct for responsible fisheries.

Moazzam Khan, deputy director of the Marine Fisheries Department (MFD) in Karachi, admits that Pakistan's fish stocks are fast depleting, but insists that the government has not issued licences to foreign trawlers since 2005, saying that the declining fish stock and rising fuel prices have made it uneconomical for foreign fleets to operate in Pakistan's waters. "We always heavily regulated the trawling activity," he says. "Although we are in talks about issuing further licences, we would not do so without assurances from the trawlers that they would fish in a sustainable manner."

Khan believes the real problem lies in the growing number of people entering the fishing industry, and says the government is planning to institute no-fishing zones in an attempt to help stocks recover.

But many fishers dismiss the government's claims, saying they have never been visited by anyone from the MFD, and that they have seen no evidence of any moves to regulate fishing. "The government has no idea what is happening here," says Mohammad Ali, a fisherman living in a makeshift tarpaulin hut in the village of Dabla Mohalla Rarri, a fishing community 15km from Ibrahim Hydri.

"There are many trawlers operating illegally in our waters. They stay away when the MSA comes, but when it leaves they come back. They come in so close they are nearly colliding with our fishing boats."

Trade campaigners argue that even though three-quarters of the world's fish stocks are deemed to be fully exploited, countries including those in the EU, and the US and Japan, continue to subsidise their fishing industries by an estimated \$6.3bn (£3.2bn) a year.

On top of this, the current round of WTO negotiations on subsidies and non-agricultural market access could lead to an elimination or significant reduction of all tariffs in the fish and fish products sector. Already five WTO members, including Brazil and India, have made offers to liberalise parts of their fishing services.

Alex Wijeratna, author of *Taking the Fish*, and trade policy campaigner at ActionAid UK, says that since Pakistan joined the WTO in 1995 it has independently pursued a significantly more liberalised fish trade regime.

“If what is happening to poor fishing communities in Pakistan is already happening through bilateral trading agreements outside the WTO, we can only imagine the global impact it would have if liberalisation is locked in by the WTO,” Wijeratna says. “It’s nothing short of mad short-termism.”

In Ibrahim Hydri, there is growing anger about the loss of its traditional livelihood. The community claims it has been duped by false promises of financial assistance, and that no effort has been made to provide alternative livelihoods. “We are not against development, but what is happening here is not development - we are going backwards,” says Shah.

## **APPENDIX 11: INTERVIEW WITH DAO GAYE, PRESIDENT OF CONIPAS (ARTISANAL FISHERIES COUNCIL OF SENEGAL),**

18 April 2006

Whilst Senegalese artisanal fishers are demonstrating in Dakar's streets and expressing their views on a fisheries partnership with the EU, the President of CONIPAS, Dao Gaye, is in Europe. He is there to represent the World Forum of Fisher People, an organization grouping 52 small-scale national associations from all over the world.

Dao Gaye explains that: "the fishers' demonstration was organized by local groups and CONIPAS member organizations. Representatives from all the Senegalese coastal fishing communities were there". The artisanal fishing sector is opposed to a fishing agreement that would give access to fully exploited resources, particularly coastal demersal species, which are already fully exploited by artisanal fishers. "Senegal has problems of over-fishing, and a variety of measures are being taken to help over-fished stocks recuperate: biological rest periods, fishing permits, marine protected areas, etc. As a stakeholder from the artisanal fishing sector, I can't understand why so many sacrifices are being demanded from the Senegalese professionals, whilst agreements are being signed with foreign countries that allow them come and fish our resources. And I'm not only talking about agreements with the 25 member countries of the EU, but also agreements with individual countries like Korea, China, etc", explains Dao Gaye.

Senegal has started negotiations with the European Union for a new agreement, on the basis of partnership. But, for Dao Gaye, whilst it is out of the question to grant Europeans access to fully exploited or over-exploited resources, the problems caused to the artisanal fishing sector by the "so-called Senegalese" industrial fleet must not be forgotten. These are vessels, from Asian or European origin operating in Senegal in the framework of joint ventures. "They are the worst", complains Dao Gaye. "These boats do not embark observers on board, and are responsible for numerous conflicts at sea with artisanal fishers. For example, at night they come into the zone reserved for small-scale fishing, plunder our fish and provoke accidents. In the framework of any partnership with the European Union, we want to see the problems created by such boats of European origin resolved. These boats should abide by the Senegalese legislation, take Senegalese crew on board, embark observers, and land all their catches in Senegal".

Another problem is that professionals in the artisanal fishing sector lack of information and are not consulted about these agreements. With the European Union, there is both a lack of consultation over the negotiations, and a lack of transparency over the use of (compensation) monies allocated to the artisanal sector "We have no information whatsoever about it", declares Dao Gaye. And no information about agreements with Asian countries either: "Here and there, we see infrastructures being built with support from China, and we say to each other that it may be part of the access agreement, but we know nothing about the content of these agreements... a partnership must be based on transparency and participation from the artisanal fishing sector", according to Dao Gaye.

Another element that must be included in the partnership is the increasingly draconian market access conditions set for Senegalese fisheries products by the European Union. "A large proportion of our high value species is exported to the EU market. This brings a lot of foreign exchange to our country", explains Dao Gaye. "Continued and reinforced support from the EU is necessary so that the artisanal fishing sector can meet European hygiene and quality standards: pirogues must be improved, we need to have polystyrene boxes on board, good quality ice in sufficient quantities, fish must be landed on very clean quays, and handled in processing plants that meet EU standards"

Dao Gaye also reaffirms the solidarity that exists between Senegalese artisanal fishers and their colleagues, the Mauritanian artisanal fishers. "We are on the same wave length concerning fisheries partnership agreements", comments Dao Gaye. "In Mauritania as in Senegal, demersal and other coastal species must be left for the nationals, particularly small-scale fishers. Other fisheries, such as hake, deep water species, tuna, all species we are not exploiting ourselves, can be open to the Europeans".

Dao Gaye also recalls that, even though there has never been any initiative in Senegal to offer the Europeans fishing possibilities for small pelagics, the fact that European giant trawlers are fishing for small pelagics in Mauritanian waters has a direct impact on the Senegalese fishers involved in that fishery. “When these giant trawlers fish in the southern zone of Mauritania, it can be felt directly in the catches of small pelagics made by the artisans in Saint Louis”.

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